

No. 12771

United States
Court of Appeals
for the Ninth Circuit.

THELMA D. HAYES,

Appellant.

vs.

FIRST NATIONAL BANK OF FAIRBANKS,
Executor of the Estate of Louis D. Colbert, de-
ceased,

Appellee.

Transcript of Record

Appeal from the United States District Court,
for the Territory of Alaska,
Fourth Division.

FILED

MAY 1951

PAUL P. O'BRIEN,

CLERK

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JULIEN A. HURLEY,
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Attorney for Appellee.

In the Probate Court for the Territory of Alaska,
Fourth Division, Fairbanks Precinct

No. 1145

In the Matter of the Estate of
LOUIS D. COLBERT, Deceased.

PETITION FOR THE PROBATE OF WILL

The petition of Thelma G. Hayes respectfully
shows:

1.

That Louis Colbert died on or about the 25th day
of May, 1947, at Fairbanks, Alaska, and was at
the date of his death a resident of Fairbanks,
Fourth Division, Territory of Alaska, and left
property within the Territory of Alaska.

2.

That said decedent left a will which your peti-
tioner alleges to be the last will of said decedent
and which is herewith presented.

3.

That the petitioner is named in said will as the
executrix thereof, and the said petitioner so named,
consents to act as such executrix.

4.

That the names, ages, relationships and residences
of the heirs of said decedent, so far as known to
petitioner are:

5.

That the names, ages and residences of the legatees and devisees of the decedent, so far as known to petitioner, are:

Emma Colbert

Thelma G. Hayes, Fairbanks, Alaska.

6.

That the character and the estimated value of the property of the estate are as follows:

Real property situated in the Town of Fairbanks, Alaska, and adjacent thereto, consisting of certain lots and dwellings at a value of \$6,000.00.

Certain mining claims in the Territory of Alaska, the exact description and location of which are unknown to petitioner. [1*]

7.

That the subscribing witnesses to the said will are James F. Haynes, Arthur A. Benz and V. A. Cobbell.

8.

That at the time said will was executed, to wit: on the said 22nd day of October, 1946, the said testator was over the age of eighteen years, to wit: of the age of 70 years or thereabouts, and was of sound and disposing mind, and not acting under duress, menace, fraud or undue influence, and was in every respect competent, by last will, to dispose of all his estate.

*Page numbering appearing at foot of page of original Certified Transcript of Record.

9.

That said will is in writing signed by the said decedent and attested by said subscribing witnesses, at the request of said testator subscribing their names to the said will in the presence of said decedent and in the presence of each other, and your petitioner alleges that said witnesses, at the time of attesting the execution of said will, were and are now competent.

Wherefore, your petitioner prays that the said will may be admitted to probate and that letters testamentary be issued to your petitioner and that for that purpose a time be appointed for proving said will, and that all persons interested be duly notified to appear at the time appointed for proving the same, and that all the necessary and proper orders may be made in the premises.

Dated at Fairbanks, Alaska, this 9th day of June, 1947.

/s/ THELMA G. HAYES,

Petitioner.

United States of America,
Territory of Alaska—ss.

Thelma G. Hayes, being first duly sworn upon her oath deposes and says: I am the petitioner above named; that I have read the foregoing petition, know the contents thereof, and that the same are true to the best of my knowledge and belief.

/s/ THELMA G. HAYES.

Subscribed and sworn to before me this 9th day of June, 1947.

[Seal] /s/ J. A. LATHANAN, JR.,

Notary Public in and for
Alaska.

My commission expires: May 20, 1951.

[Endorsed]: Filed June 11, 1947. [2]

[Title of Probate Court and Cause.]

AFFIDAVIT IN SUPPORT OF PROBATE
OF WILL

United States of America,
Territory of Alaska—ss.

Warren A. Taylor, being first duly sworn, upon his oath deposes and says: That he is an attorney in practice as such at Fairbanks, Alaska. That on the 22nd day of October, 1946, he was called to the St. Joseph's Hospital at Fairbanks at the request of Louis D. Colbert to draw a will for him. That the said Louis D. Colbert discussed the terms of the said will with affiant and affiant drew the said will and took it to the said Louis D. Colbert who executed the same according to law. That later in the same day the said Louis D. Colbert requested affiant to come to the said hospital as he desired to make a change in said will.

That upon going to the said hospital Louis D. Colbert requested affiant to draw another will for

him as he wished to change the manner of payment of a legacy to his sister. That affiant did draw another will along the lines requested by Louis D. Colbert and sent the same to the hospital where it was duly signed and witnessed according to law.

That at the time of the conversations with affiant, Louis D. Colbert was of sound and disposing mind and memory and in possession of his faculties, and was not acting under duress, fraud or the undue influence of any person whomsoever.

/s/ WARREN A. TAYLOR,

Subscribed and sworn to before me this 6th day of August, 1947.

[Seal] /s/ J. A. LATHANAN, JR.,
Notary Public for Alaska.

My commission expires May 20, 1951.

[Endorsed]: Filed August 6, 1947. [3]

[Title of Probate Court and Cause.]

LAST WILL AND TESTAMENT OF
LOUIS D. COLBERT

Know All Men By These Presents, that I Louis D. Colbert, of Fairbanks, Alaska, being of lawful age and of disposing mind and memory, and not acting under duress, fraud, menace or the undue influence of any persons or person whomsoever, do make, publish and declare this to be my Last Will and Testament in the manner following:

1. I direct that the expense of my last illness and burial be paid as soon as can conveniently be done, as well as all my other just obligations.

2. I hereby bequeath unto Thelma Gregor Hayes, of Fairbanks, Alaska, all my property, real, personal and mixed, wheresoever situate, and of every kind and nature, of which I may die possessed, or to which I am entitled at the time of my death, to be and become her sole and separate property; provided however, the said Thelma Gregor Hayes shall pay to my sister Emma Colbert, the sum of One Thousand (\$1,000.00) Dollars; also providing that the said Thelma Gregor Hayes convey certain portions of property now possessed by me to such persons as may be designated by me prior to my passing away.

3. I hereby appoint Thelma Gregor Hayes, to be the executor of this, my last will and testament; and I further direct that the probate of my estate be carried out without the intervention of any court or courts whatsoever, except as may be required by law.

4. I hereby revoke any and all wills heretofore by me made.

In Witness Whereof, I have hereunto set my hand this 22nd day of October, 1946.

/s/ L. D. COLBERT,

In the Presence of:

/s/ JAMES F. HAYNES,

/s/ ARTHUR A. BENZ,

/s/ V. A. CABBELL. [4]

ATTESTATION OF WITNESSES

We, the undersigned, whose names are subscribed as witnesses to the foregoing instrument, do hereby certify that the said instrument, consisting of one page beside this page, was on the date hereof signed and subscribed to by Louis D. Colbert in our presence, and in the presence of each of us, and the said Louis D. Colbert then and there declared and published the said instrument to be his last will and testament, and we, at his request, and in his presence, and in the presence of each other have subscribed our names as witnesses thereto.

Dated this 22nd day of October, 1946.

/s/ JAMES F. HAYNES,

Residing at Fairbanks,
Alaska.

/s/ ARTHUR A. BENZ,

Residing at Fairbanks,
Alaska.

V. A. CABBELL.

[Endorsed]: Filed June 11, 1947. [5]

[Title of Probate Court and Cause.]

AFFIDAVIT OF SUBSCRIBING WITNESS

United States of America,
Territory of Alaska—ss.

James F. Haynes, being first duly sworn, deposes and says: That I reside in the Town of Fairbanks, Alaska, Fourth Division, Territory of Alaska; I knew the Testator, Louis D. Colbert, also known as L. D. Colbert, on the 22nd day of October, 1946, the date of the instrument now shown to me, marked as filed in this Court on the 11th day of June, 1947, purported to be the Last Will and Testament of the said deceased; I am one of the subscribing witnesses to said instrument; I also knew at the time of signing of said instrument Arthur A. Benz, and V. A. Cabbell, the other subscribing witnesses. The said instrument was signed and sealed by the said Louis D. Colbert at Fairbanks, in the Fourth Division, Territory of Alaska, on the 22nd day of October, 1946, the day it bears date, in the presence of myself and of the said Arthur A. Benz and V. A. Cabbell, and the said Testator thereupon published the said instrument as and declared to us the same to be his Last Will and Testament, and requested us in attestation thereof to sign the same as witnesses. The said Arthur A. Benz, V. A. Cabbell and I, then and there, in the presence of the said Testator and in the presence of each other subscribed as witnesses to the said instrument.

At the time of executing the said instrument,

to wit: the 22nd day of October, 1946, the said Testator was over the age of eighteen years, to wit: the age of 72 years or thereabouts, and was of sound and disposing mind and not acting under duress, menace, fraud, undue influence or misrepresentation.

/s/ JAMES F. HAYNES. [6]

Subscribed and sworn to before me this 12th day of June, 1947.

[Seal] /s/ JOHN A. LATHANAN, JR.

Notary Public in and for
Alaska.

My commission expires 5/20/51.

[Endorsed]: Filed August 6, 1947. [7]

[Title of Probate Court and Cause.]

AFFIDAVIT OF SUBSCRIBING WITNESS

United States of America,
Territory of Alaska—ss.

V. A. Cabbell, being first duly sworn, deposes and says: That I reside in the Town of Fairbanks, Fourth Division, Territory of Alaska; I knew the Testator, Louis D. Colbert, also known as L. D. Colbert, on the 22nd day of October, 1946, the date of the instrument now shown to me, marked as filed in this Court on the 11th day of June, 1947, purported to be the Last Will and Testament of the said deceased; I am one of the subscribing witnesses

to said instrument; I also knew at the time of signing said instrument, Arthur A. Benz, and James F. Haynes, the other subscribing witnesses. The said instrument was signed and sealed by the said Louis D. Colbert of Fairbanks, in the Fourth Division, Territory of Alaska, on the 22d day of October, 1946, the day it bears date, in the presence of myself and of the said Arthur A. Benz, and James F. Haynes, and the said Testator thereupon published the said instrument as, and declared to us, the same to be his Last Will and Testament, and requested us in attestation thereof to sign the same as witnesses. The said Arthur A. Benz, James F. Haynes and I, then and there, in the presence of the said Testator and in the presence of each other subscribed as witnesses to the said instrument.

At the time of executing the said instrument, to wit: the 22d day of October, 1946, the said Testator was over the age of eighteen years, to wit: the age of 72 years or thereabouts, and was of sound and disposing mind and not acting under duress, menace, fraud, undue influence or misrepresentation.

/s/ V. A. CABELL.

Subscribed and sworn to before me this 12th day of June, 1947.

[Seal] /s/ JOHN A. LATHANAN, JR.,
Notary Public in and for
Alaska.

My Commission expires 5/20/51.

[Endorsed]: Filed August 6, 1947. [8]

[Title of Probate Court and Cause.]

PETITION TO REVOKE LETTERS TESTAMENTARY AND GRANT THEM TO PERSON HAVING PRIOR RIGHT

To: Everett E. Smith, U. S. Commissioner and ex-officio Probate Judge:

The petition of Thelma G. Hayes respectfully shows:

1.

That on the 27th of May, 1947, the above entitled court appointed the First National Bank of Fairbanks, executor of the estate of Louis D. Colbert, deceased, and said bank on the 27th day of May, 1947, qualified for such trust and letters testamentary were issued to it, and it, ever since and now is, the qualified and action executor of said estate.

2.

That the said First National Bank of Fairbanks was not entitled to said appointment as a will executed by the deceased on the 22nd day of October, 1946, and subsequent to the will filed for probate by the said bank, has been filed for probate in this court by petitioner.

3.

That your petitioner is the person named in the said will executed on the 22nd day of October, 1946, as executor of the will of said decedent, and has the prior right to letters testamentary upon said estate.

Wherefore, petitioner prays that the letters testamentary issued to the First National Bank of Fairbanks be revoked, and that letters testamentary upon the estate of said Louis D. Colbert be issued to your petitioner.

/s/ THELMA D. HAYES,
Petitioner. [9]

United States of America,
Territory of Alaska—ss.

Thelma D. Hayes, being first duly sworn, upon her oath deposes and says: That she is the petitioner named in the foregoing petition; that she has read the foregoing petition, knows the contents thereof, and that the allegation therein contained are true.

/s/ THELMA D. HAYES.

Subscribed and sworn to before me this 31st day of July, 1947.

[Seal] /s/ WARREN A. TAYLOR,
Notary Public for Alaska.

My commission expires 8/11/47.

[Endorsed]: Filed August 1, 1947. [10]

[Title of Probate Court and Cause.]

ANSWER OF THE FIRST NATIONAL BANK
OF FAIRBANKS, ALASKA, TO THE PETI-
TION TO REVOKE THEIR LETTERS
TESTAMENTARY AND TO APPOINT
THELMA D. HAYES AS EXECUTOR OF
SAID ESTATE

Comes now the First National Bank of Fairbanks, Alaska, Executor of the Estate of said Louis D. Colbert, deceased, and for answer to the petition of Thelma D. Hayes, on file herein, admits, denies and alleges as follows:

I.

Admits the allegations contained in paragraph 1 of said petition.

II.

Admits that a pretended will, claimed to be executed by said deceased, on the 22nd day of October, 1946, has been filed for probate in the above entitled Court by said petitioner.

III.

Admits that said petitioner is the person named in said pretended will, claimed to have been executed on the 22nd day of October, 1946, as Executor of said pretended will of said deceased.

IV.

Denies each and every allegation contained in said petition of the said Thelma D. Hayes, and each and

every part thereof, except as hereinabove specifically admitted.

And for a first further and separate and affirmative answer and defense to said petition, the said First National Bank of Fairbanks, Alaska, alleges as follows: [11]

I.

That at the time said pretended will was made, and for a long time prior thereto, and since said time, the said Louis D. Colbert was not of sound and disposing mind and memory, and he was unable to comprehend the purpose, or the nature, of the business that was then being transacted, or the purpose, or consequence, of the signing of said will, and was unable to understand, or to know, what was then being done.

II.

That on the 23d day of October, 1946, a petition was regularly and duly filed by the First National Bank of Fairbanks, Alaska, for appointment of it as a guardian of the said Louis D. Colbert, and his property, on account of him not being of sound and disposing mind and memory, and unable both on account of his mental and physical condition to take care of his business, and on the 15th day of November, 1946, the said First National Bank of Fairbanks, Alaska, was regularly and duly appointed and qualified as such guardian.

And for a second, further separate and affirmative answer and defense to said petition, the said First National Bank of Fairbanks alleges:

I.

That the affixing of the signature of the said Louis D. Colbert on said purported will, presented for probate by the said Thelma D. Hayes, was not the free and voluntary act and deed of the said Louis D. Colbert, and the said will was not signed by the claimed attesting witnesses at the request of the said Louis D. Colbert, or in his presence, or in the presence of each other.

Wherefore the said First National Bank of Fairbanks, Alaska, prays that the Letters Testamentary issued to the said First National Bank of Fairbanks, Alaska, be not revoked and that Letters Testamentary be not granted to the said Thelma D. Hayes, and that her petition be dismissed, and that said First National Bank of Fairbanks, Alaska, recover from said petitioner its costs and disbursements herein, and for such other and further relief as is just and equitable in the premises.

/s/ JULIEN A. HURLEY,

COLLINS & CLASBY,

By /s/ CHAS. J. CLASBY,

Attorneys for the First National Bank of Fairbanks, Alaska. [12]

United States of America,
Territory of Alaska—ss.

E. H. Stroecker, being first duly sworn upon oath, deposes and says: That I am President of the First National Bank of Fairbanks, Alaska, and make this verification on behalf of said bank; that I have read the foregoing Answer, know the contents thereof, and the same is true as I verily believe.

/s/ E. H. STROECKER.

Subscribed and sworn to before me this 15th day of August, 1947.

[Seal] /s/ JULIEN A. HURLEY,

Notary Public in and for the
Territory of Alaska.

My Commission expires June 12, 1949.

Service acknowledged.

[Endorsed]: Filed August 18, 1947. [13]

[Title of Probate Court and Cause.]

REPLY

Comes now Thelma D. Hayes, petitioner, and for reply to the first separate and affirmative defense, admits, denies and alleges as follows:

I.

Denies each and every allegation contained in

paragraph one of the first affirmative defense of the First National Bank of Fairbanks, Alaska.

II.

Denies each and every allegation contained in paragraph two of the first affirmative defense of the First National Bank of Fairbanks, Alaska.

And for reply to the second separate and affirmative defense of the First National Bank of Fairbanks, the petitioner admits, denies and alleges as follows:

I.

Denies each and every allegation contained in paragraph one of the second separate and affirmative defense of the First National Bank of Fairbanks, Alaska.

Wherefore, having replied to the answer and affirmative defense of the First National Bank of Fairbanks, petitioner prays for the relief demanded in her petition on file herein.

LATHANAN & TAYLOR,

By /s/ WARREN A. TAYLOR,

Attorneys for Petitioner. [14]

United States of America,
Territory of Alaska—ss.

Thelma D. Hayes, being first duly sworn upon her oath, deposes and says: That I have read the

foregoing Reply, know the contents thereof, and the same are true as I verily believe.

/s/ THELMA D. HAYES.

Subscribed and sworn to before me this 26th day of September, 1947.

[Seal] /s/ WARREN A. TAYLOR,
Notary Public in and for
Alaska.

My Commission expires 8/11/51.

Service acknowledged.

[Endorsed]: Filed October 1, 1947. [15]

[Title of Probate Court and Cause.]

FINDINGS OF FACT
AND CONCLUSIONS OF LAW

This cause coming on regularly for trial before the above-entitled Court on the 16th day of June, 1950, and the Petitioner, Thelma D. Hayes, appearing in person and by and through her attorneys, Warren A. Taylor, J. L. McCarrey, Jr., and William V. Boggess, and the First National Bank of Fairbanks, Alaska, Executor of the above-entitled estate, appearing by and through its Trust Officer, Frank P. DeWree, and by its attorney, Julien A. Hurley, and the Court having heard the testimony of the witnesses called on behalf of the respective parties hereto and after considering the same and

being fully advised in the premises, does make and establish the following as the Findings of Fact herein:

I.

That at the time said pretended will offered for probate by Petitioner, Thelma D. Hayes, was signed by the said Louis D. Colbert, Deceased, the said Louis D. Colbert was not of sound and disposing mind and memory and he was unable to comprehend the nature or purpose of the business being transacted or the purpose or consequence of signing said will, and was unable to understand or know what was then being done.

II.

That on the 23rd day of October, 1946, a petition was regularly and duly filed by the First National Bank of Fairbanks, Alaska, for appointment of it as guardian of the said Louis D. Colbert and his property on account of him being mentally incompetent and incapable either to care for himself or of conducting his own affairs or to manage his property, and on the 15th day of November, 1946, the said First National Bank of Fairbanks, [18] Alaska, was regularly and duly appointed and qualified as such guardian.

III.

That the affixing of the signature of the said Louis D. Colbert on said purported will presented for probate by the said Thelma D. Hayes was not the free and voluntary act and deed of the said Louis

D. Colbert because the said Louis D. Colbert was mentally incompetent to execute a will at said time.

From the foregoing Findings of Fact the Court does now enter and establish the following as Conclusions of Law herein:

I.

That the Letters Testamentary issued to the First National Bank of Fairbanks, Alaska, should not be revoked.

II.

That the said Louis D. Colbert was not of sound and disposing mind and memory at the time of the signing of said pretended will offered for probate by the said Thelma D. Hayes and was mentally incompetent to execute a will at said time.

III.

That said Petition of the said Thelma D. Hayes should be dismissed and that the said First National Bank of Fairbanks, Alaska, should be awarded its costs and disbursements herein.

Let Judgment enter accordingly.

Dated at Fairbanks, Alaska, this 27th day of June, 1950.

[Probate Seal] /s/ CLINTON B. STEWART,
U. S. Commissioner and
Ex-Officio Probate Judge.

[Endorsed]: Filed June 27, 1950. [19]

In the Probate Court for the Territory of Alaska,
Fourth Division, Fairbanks Precinct

No. 1145

In the Matter of the Estate of
LOUIS D. COLBERT, Deceased.

JUDGMENT

This cause coming on regularly to be heard before the above-entitled Court on the 16th day of June, 1950, and the Petitioner, Thelma D. Hayes, appearing in person and by and through her attorneys, Warren A. Taylor, J. L. McCarrey, Jr., and William V. Boggess, and the First National Bank of Fairbanks, Alaska, Executor of the above-entitled estate, appearing by and through its Trust Officer, Frank P. DeWree, and by its attorney, Julien A. Hurley, and the Court having heard the testimony of the witnesses called on behalf of the respective parties hereto and having taken the same under advisement, and having entered the Findings of Fact and Conclusions of Law herein and ordered Judgment in accordance therewith;

Now, Therefore, It Is Hereby Ordered, Adjudged and Decreed as follows:

I.

That the Letters Testamentary issued to the First National Bank of Fairbanks, Alaska, herein be not revoked.

II.

That the said Louis D. Colbert at the time of signing said pretended will offered for probate by the said Thelma D. Hayes was not of sound and disposing mind and memory and was mentally incompetent to execute a will.

III.

That the said Petition of the said Thelma D. Hayes is hereby dismissed. [20]

IV.

That the said First National Bank of Fairbanks, Alaska, recover judgment against the said Thelma D. Hayes for its costs herein to be taxed by this Court in the sum of \$.

Done at Fairbanks, Alaska, this 27th day of June, 1950.

[Probate Seal] /s/ CLINTON B. STEWART,
U. S. Commissioner and
Ex-Officio Probate Judge.

Service admitted.

[Endorsed]: Filed June 21, 1950. [21]

[Title of Probate Court and Cause.]

EXCEPTIONS

Comes Now, Thelma D. Hayes, Appellant, by her attorneys, Warren A. Taylor and J. L. McCarrey, Jr., and objects and excepts to the Judgment entered by the above-entitled Court on the 27th day of June, 1950, dismissing the said appellant's Petition to Revoke Letters Testamentary and Grant Them to Person Having Prior Right filed on the first day of August, 1947, whereby the said appellant as a beneficiary under a Will executed by the above named decedent, Louis D. Colbert, on the 22nd day of October, 1946, sought to revoke letters testamentary issued to the First National Bank of Fairbanks, Alaska in Probate Case No. 1141 and procure the issuance to herself of letters testamentary founded upon said Will of the 22nd day of October, 1946, upon the grounds that said will was executed subsequent to the will upon which letters testamentary were issued to the said First National Bank in Probate Case No. 1141.

That the said Thelma D. Hayes specifically objects to and excepts to the finding by the above-entitled Court that the said decedent Louis D. Colbert was mentally incompetent to execute the Will of October 22, 1946, as more fully set out in paragraph II of said Judgment and in paragraph I of the Court's Findings of Fact entered on the 27th day of June, 1950 in the above-entitled cause, to which Finding appellant excepts in its entirety;

that the said Thelma D. Hayes also specifically objects and excepts to the finding of said Court that the said will of October 22, 1946, was not the free and voluntary act of the said Louis D. Colbert by reason of mental incompetency as set out more fully in paragraph III of the said Findings of Fact, to which Finding appellant excepts in its [22] entirety.

That the said Findings of Fact and Judgment of said Court is contrary to the law and the evidence in said case.

Wherefore, the Appellant, Thelma D. Hayes, prays that said Judgment of the above-entitled Court be reversed and that the said Court be ordered to revoke the Letters Testamentary issued to the First National Bank of Fairbanks, Alaska, in Probate Case No. 1141, and be further ordered to grant Letters Testamentary to the said Thelma D. Hayes, appellant, in the above-entitled cause.

Dated at Fairbanks, Alaska, this 30th day of June, 1950.

/s/ WARREN A. TAYLOR,
Of Attorneys for Appellant.

Service acknowledged.

[Endorsed]: Filed June 30, 1950. [23]

[Title of Probate Court and Cause.]

NOTICE OF APPEAL

To: The Honorable Clinton B. Stewart, United States Commissioner and Probate Judge of the Fairbanks Precinct, Fourth Judicial Division;

And the attorney of record for the First National Bank of Fairbanks, Executor of the Estate of Louis D. Colbert, deceased:

You, and each of you, will please take notice that Thelma D. Hayes has appealed and does hereby appeal to the Honorable District Court for the Territory of Alaska, Fourth Judicial Division, from that certain Judgment made and entered by the above-entitled Probate Court in the above entitled cause, on the 27th day of June, 1950, and from the findings of said Court as more particularly set forth in the Exceptions filed herein your appellant.

Dated at Fairbanks, Alaska, this 30th day of June, 1950.

/s/ WARREN A. TAYLOR,

Of Attorneys for Appellant.

Service and receipt of copy acknowledged.

[Endorsed]: ' Filed June 30, 1950. [24]

In the District Court for the District of Alaska
Fourth Judicial Division

No. 6515

In the Matter of the Estate of
LOUIS D. COLBERT,
Deceased.

FIRST NATIONAL BANK OF
FAIRBANKS, Executor.

ORDER

Whereas in the order entered in the above matter which was an appeal from the Probate Court for the Fairbanks Precinct, Fourth Division, number 1145 probate, which order was dated and filed herein on October 4, 1950, the title was erroneously stated as "In The Probate Court for the Fairbanks Precinct" instead of "In the District Court for the District of Alaska" and the number was "1145 Probate" instead of "number 6515" of the District Court,

Now therefore the Clerk of the Court is instructed to correct said order by lining out said erroneous parts and inserting the correct matters as herein above set forth.

Said order as amended shall be effective as of October 4, 1950.

Dated at Fairbanks, Alaska, this 1st day of November, 1950.

/s/ HARRY E. PRATT,

District Judge.

Entered in Court Journal Nov. 1, 1950.

[Endorsed]: Filed November 1, 1950. [36]

In the District Court for the District of Alaska
Fourth Judicial Division

No. 6515

In The Matter of
THE ESTATE OF LOUIS D. COLBERT,
Deceased.

FIRST NATIONAL BANK OF FAIRBANKS,
Executor.

NOTICE OF APPEAL

Notice is Hereby Given That Thelma D. Hayes hereby appeals to the United States Court of Appeals for the Ninth Circuit from the Order of the above-entitled Court overruling the exceptions of the said Thelma D. Hayes to the Judgment and Findings of the Probate Court for the Territory of Alaska, Fourth Division, Fairbanks Precinct, dismissing the said Thelma D. Hayes Petition to Revoke Letters Testamentary and grant them to persons having prior right and sustaining the findings of fact, conclusions of law and judgment of said

Probate Court and entered in this action on the 4th day of October, 1950, and amended on the 1st day of November, 1950.

/s/ WARREN A. TAYLOR,
Of Attorneys for
Thelma D. Hayes.

Receipt of copy acknowledged.

[Endorsed]: Filed November 3, 1950. [37]

[Title of District Court and Cause.]

DESIGNATION OF RECORD

To: The Clerk of the District Court for the District of Alaska, Fourth Judicial Division

You are hereby requested to prepare, certify and transmit to the Clerk of the United States Court of Appeals for the Ninth Circuit, with reference to the Notice of Appeal heretofore filed by Thelma D. Hayes in the above cause, the entire transcript of record in the above cause, prepared and transmitted as required by law and by rules of said Court.

/s/ WARREN A. TAYLOR,
Of Attorneys for
Thelma D. Hayes.

Service and receipt of copy acknowledged.

[Endorsed]: Filed November 6, 1950. [38]

In the District Court for the District of Alaska
Fourth Judicial Division

No. 6515

In the Matter of
The Estate of LOUIS D. COLBERT, Deceased.

Appearances:

MR. WARREN A. TAYLOR,
Of Fairbanks, Alaska,
Attorney for Appellant, Thelma D.
Hayes.

MR. J. L. McCARREY,
Of Anchorage, Alaska,
Attorney for Appellant, Thelma D.
Hayes.

MR. JULIEN A. HURLEY,
Of Fairbanks, Alaska,
Attorney for Appellee, First National
Bank of Fairbanks, Alaska, Execu-
tor of the Estate of Louis D. Colbert,
Deceased.

September 5, 1950, 10 o'Clock A.M.

Before: Hon. Harry E. Pratt,
District Judge.

PROCEEDINGS

The Court: This is the time set for trial in the
matter of the Colbert Estate, 6515. Counsel ready?

Mr. Taylor: Yes, your Honor. At this time, I would like Mr. J. L. McCarrey of Anchorage, Alaska, associated as co-counsel for the plaintiff in the case.

The Court: Very well. May be entered. Proceed.

Mr. Taylor: If the Court please——

The Court: Mr. Taylor.

Mr. Taylor: Mr. Hurley, this is a case involving a will of Louis Colbert, a resident of Fairbanks, Alaska, and the plaintiff, Thelma Gregor Hayes. We expect to prove by competent testimony that on the 22nd day of October in 1946, the deceased Louis Colbert, while of sound and disposing mind and memory executed a will leaving the bulk of his property to Thelma Hayes and part of his property and cash bequest to his sister, Emma Colbert; that on the same day after contemplating the effects of the bequest to his sister, that he changed the will and on the same day another one was filed or was executed by Mr. Colbert in the presence of three witnesses. We will prove by competent testimony, your Honor, that at the time of making disposition of his property that he was of sound mind, that he knew what his property consisted of, knew who the beneficiaries of his will were and that he was in all respects competent to execute such a will and that the will executed October 22, the second will, was the last will [1*] and testament of the said deceased and should be probated instead of a will dated quite a number of years ago in which he made a different disposition of his property.

* Page numbering appearing at foot of page of original Reporter's Transcript of Record.

Mr. Hurley: May it please the Court——

The Court: Mr. Hurley.

Mr. Hurley: The evidence in this case will show that Mr. Colbert was quite ill for some time prior to the 8th day of October, 1946, and that at that time, why, on the advice of his doctor, Dr. Schaible, here in Fairbanks, he was sent to the hospital and he was ailing with what is commonly known as a hardening of the arteries. It was affecting his mind and in the hospital the evidence will show he was mentally incompetent as well as physically unwell and different people visited him there and the doctor visited him and not long after he went to the hospital the evidence will show that Thelma Hayes began under power of attorney drawing his money out of the bank and it was reported to me; and the evidence will show that I went over to see him along with Harvey Van Hook to see what his condition was personally, and after a talk with the doctor the evidence will show that we filed a petition in the Probate Court to have a guardian appointed and a hearing was held and a guardian, to wit, the First National Bank of Fairbanks, was appointed guardian and remained in that capacity until he died, at which time they filed a will for probate and the will was admitted to probate and—shortly after his death—and [2] it was not until in June I think it was that the—that Thelma Hayes filed a petition to have the probate—the will set aside and the probate set aside and to have her appointed. That went on for a year or two and was finally heard before the Judge of the Probate Court and the petition

was denied and the case is here on appeal from the decision of the Probate Judge. The evidence will show by the doctor's testimony and by the testimony of a number of witnesses that he was mentally incompetent and was actually insane at the time the will was presented by Thelma Hayes, at the time it was prepared and at the time it was signed.

The Court: Call your first witness.

Mr. Taylor: If the Court please, I believe under the laws of the Territory of Alaska, considerable latitude is allowed the court in such cases as this and to have the whole record before the Court, the record which was taken by Mr. Belida, the court reporter and reduced to writing, I would at this time move that the record of the proceedings had in the Probate Court be introduced in evidence for the court's consideration of the matters involved in this case. I don't believe—I believe that the court has the power under the laws of the Territory of Alaska and we believe that under that, the court could review this case by the record itself if such a record has been made and this has been made by the court reporter and I believe his certificate is attached to it or [3] we can have him identify it as the record made by him at the trial in the Probate Court.

The Court: Any objection, Mr. Hurley?

Mr. Hurley: Well, I think there is a lot in that record that is not admissible and wasn't objected to because at the time I didn't see any particular reason for objecting to it, although we have agreed that the testimony of Dr. Schaible can be considered

as shown by the transcript of the testimony. I don't know as there is any particular objection to it. I have some more witnesses, however, that I want to call. I don't want to be limited to the record.

Mr. McCarrey: If it please the Court, there is no reason to the limitation of this. If Mr. Hurley would like to call additional witnesses, that is perfectly reasonable to us. We would like to have, if he desires to have Dr. Schaible's testimony go in, we feel quite satisfactory that the balance go in before the Court.

Mr. Hurley: I haven't any objection to it, your Honor.

The Court: Now, let me see. They have offered all of the evidence which was submitted and reported in the Commissioner's Court.

Mr. Hurley: Yes.

The Court: Now, you have no objection to it being admitted? [4]

Mr. Hurley: Subject to the objections contained in the record.

The Court: Subject—yes, to the objections.

Mr. Hurley: My objections contained in the record.

The Court: Very well, then.

Mr. Hurley: And I would like to call additional witnesses.

Mr. Taylor: We expect to, your Honor, call additional witnesses. Possibly some of the testimony——

The Court: The testimony may be admitted then under those conditions.

Mr. Taylor: Also as to some of the witnesses, we would like to call them also for further testimony and possibly it might be repititious of some things here.

The Court: Well, that's something I don't want. I don't want you to put in the evidence in that record and go ahead and go right over the same thing. No, I wouldn't consent to that at all.

Mr. Taylor: That's satisfactory, your Honor.

Mr. Hurley: That's satisfactory.

The Court: If you—I would suggest that you better read or you will take it up in your argument the various parts of this testimony that you think is controlling.

Mr. Taylor: We could read the testimony, [5] your Honor, so as to show the questions and answers that were given at that time. We thought it was quite voluminous. It might be—it might give the Court further enlightenment if it was read and the Court would have this transcript later to refresh his memory. Whatever the Court would feel would be—bring the issues before the Court in the best way.

The Court: I can read it over and read it over carefully in chambers. It would take quite a while.

Mr. Taylor: Yes, sir.

The Court: But you can, when it come to argument, you can pick out the salient points in the testimony.

Mr. Taylor: Oh, yes, sir, your Honor. You mean prior to when we finish the case, tomorrow or today, however long it will take, we can argue the case to

the Court and the Court will consider the testimony.

The Court: Very well.

Mr. Taylor: Your Honor, is this to be marked as an exhibit or just filed?

The Court: Oh, no. Just as an exhibit.

Clerk of the Court: Appellant's exhibit "A."

(Transcript of the proceedings had in the Probate Court, dated June 16, 1950, was received and marked in evidence as Appellant's Exhibit "A.")

The Court: Do you have any witnesses to put on in your case in chief? [6]

Mr. Taylor: Yes, your Honor, we have one witness.

The Court: Very well, call——

Mr. McCarrey: Your Honor, before doing so, may I request that the court reporter affix his certification to the document? Inadvertently that was deleted.

Mr. Hurley: We can stipulate it. It was testimony taken upon the trial.

Mr. McCarrey: Very well.

The Court: Very well.

Mr. McCarrey: We call Mr. Jimmy Haynes.

JAMES F. HAYNES

called as a witness in behalf of the appellant, being first duly sworn, testified as follows:

Direct Examination

By Mr. Taylor:

Q. Will you state your name please?

(Testimony of James F. Haynes.)

A. James F. Haynes.

Q. And where do you reside, Mr. Haynes?

A. Fairbanks.

Q. And how long have you resided at Fairbanks?

A. About eight years.

Q. What is your occupation, Mr. Haynes?

A. I am a trucker right now. [7]

Q. And were you formerly—did you formerly drive a cab at Fairbanks, Alaska? A. Yes.

Q. Were you so driving a cab in the fall of '46 or more particularly in October, 1946?

A. Yes.

Q. Are you acquainted with Thelma Hayes, one of the parties in this case, Thelma Gregor, also known as— A. Yes, I am.

Q. Did you know Lou Colbert during his lifetime, Mr. Haynes?

A. Only time I met him was when I went up to see him sign the will. I didn't know him.

Q. You were—You remember the date that you signed the will for Mr. Colbert?

A. No, I don't remember the exact date; just what I have heard here in the court.

Mr. Taylor: If the Court please, if Mr. Hurley would so stipulate, I would move that these exhibits be—

Mr. Hurley: Can I see the one you have?

(Mr. Taylor handed document to Mr. Hurley.)

Mr. Hurley: Is this the first or the last will?

Mr. Taylor: It is the first will.

Mr. Hurley: Where is the last one?

(Testimony of James F. Haynes.)

Mr. Taylor: If the Court please, it seems like there is one exhibit that is not here. [8]

Mr. McCarrey: May I point out, Mr. Taylor, you will find that in the probate proceedings, 1145.

The Court: Here are the files, Mr. Taylor. Perhaps it is in there.

(Mr. Taylor presented document to Mr. Hurley.)

Mr. Taylor: I would like to offer all these exhibits. I would like to offer them all at this time as they have been testified to and identified and admitted in the hearing before the Probate Court and have them marked by the Clerk in the order in which they were admitted before the Probate Court just to save time.

The Court: Can they take the same number that they had in the Probate Court and save remarking?

Mr. Taylor: I believe that would be alright, your Honor. I don't think they marked this one.

Mr. Hurley: It's marked. It was Exhibit "D" I think.

Mr. McCarrey: Well, may I point out to Mr. Taylor that that was in the probate file itself and therefore identified as Mr. Hurley says by "D." I think the whole file is "D."

Mr. Taylor: The whole probate file was introduced as an exhibit.

The Court: Very well.

(Testimony of James F. Haynes.)

Mr. Taylor: This is Petitioner's Exhibit "C" that [9] we just took out of this thing.

Mr. Hurley: "C," that's right.

Mr. Taylor: I understood that we could mark all of these exhibits, Mr. Clerk, in the order in which they were introduced in the previous trial. Is that what the Court meant?

The Court: That was what I thought would be agreeable.

Mr. Hurley: I think you will find a list there by the Commissioner with all the exhibits marked showing what they are in the file there. He made a list of them.

Mr. Taylor: The reporter made a list, your Honor, of all the exhibits and where the testimony shows in the hearing there.

The Court: Does he have an exhibit "A" there?

The Clerk of the Court: He has, your Honor. That is probate file number 1114.

The Court: Well then, Mr. Clerk, the exhibit you have already marked instead of "A," mark it "A prime." Hereafter, we will keep the markings of the Commissioner.

Clerk of the Court: Very well, sir.

The Court: And you stipulate that all of them are in evidence?

Mr. Taylor: Yes, your Honor.

Mr. Hurley: Yes, your Honor. [10]

The Court: Very well. We won't have to stop to re-mark them.

(Testimony of James F. Haynes.)

(Exhibit "A" was remarked Exhibit "A-1" and all of the exhibits introduced in evidence at the trial in the Probate Court were introduced in evidence at this time and received the same marking as at the previous trial.)

Q. (By Mr. Taylor): Mr. Haynes, I hand you a part of Exhibit "C" I believe and ask you to look at those signatures and state whose signatures appear on that? A. You mean read the names?

Q. Yeah, if you know whose signatures appeared on——

Mr. Hurley: Would you mind standing back a little bit, Mr. Taylor, so he can speak louder and so I can see him?

A. Well, my name is on there. Arthur A. Benz, V. A. Cobbell and L. D. Colbert.

Q. And did you—is that your handwriting, Mr. Haynes? A. Yes, sir.

Q. And you signed that?

A. Yes, I signed it.

Q. Would you state when and where you signed it? A. I was up to the hospital.

Q. And what was the date that you signed that, Mr. Haynes?

A. 22nd day of October, 1946. [11]

Q. And who else was present at the time, Mr. Haynes?

A. (Looking at paper) V. A. Cobbell. Gosh, I don't know. (Pause) You and Thelma; Thelma Gregor.

(Testimony of James F. Haynes.)

Q. Do you remember was Mr. Benz there that also signed it? Do you know Arthur Benz?

A. I didn't know him personally, no. All I remember was there was the names I stated and then there were three or four of us in there, just in and out more or less.

Mr. Hurley: What was that answer?

Witness: I was in——

(The answer was read by the reporter.)

Q. How did you happen to go to the hospital, Mr. Haynes?

A. Thelma asked me if I would witness this will.

Q. And when—did you see Mr. Colbert at that time? A. Yes.

Q. And who requested you to sign that paper?

A. Thelma did.

Mr. Hurley: What was that?

Witness: Thelma Gregor.

Q. But after you got to the hospital, did Mr. Colbert say anything about that particular piece of paper?

A. Yeah. He asked me if I would sign it and witness it.

Q. And what was his condition then so far as you could ascertain as to knowing what he was doing?

A. I didn't have the other opinion that he wasn't—that he [12] didn't now what he was doing.

Q. Did——

A. He seemed all right to me. I didn't know the man.

(Testimony of James F. Haynes.)

Q. Had you—now, prior to that, did you sign another will in—now was Mr. Colbert in bed at the time you went up there? A. Yes.

Q. And besides asking you to sign the will as a witness, did he carry on any further conversation?

A. Not with me.

Q. Did he talk with the other people?

A. Yes.

Q. That were in there?

A. Yes, he was talking.

Q. And do you remember what time of the day it was you went up there, Mr. Haynes?

A. As far as I remember, it was in the afternoon, late evening when I went up.

Q. And how long did you remain there?

A. About 5 minutes I imagine.

Q. Did you know Mr. Kobbell or Cobble or Cobble who was a witness at the same time?

A. No, I didn't know him.

Q. Do you know what his occupation was?

A. Off hand I don't know, no. I think he was a cab driver. I don't know. [13]

Q. Had you seen him since that time, Mr. Haynes? A. No, sir.

Q. And at the time then that you signed the will, you believe Mr. Colbert was in a state of mind that he knew what he was doing when he made that disposition of his property?

A. I would say he was.

(Mr. Taylor talked with Mr. McCarrey.)

(Testimony of James F. Haynes.)

Q. Mr. Haynes, did you see Mr. Cabble or Cobble sign the will at the time that you did?

A. Colbert?

Q. Cobbell? A. Yes.

Q. Did you see Mr. Benz sign the will——

A. Yes.

Q. (Continuing): At the same time and did you see Mr. Colbert sign the will? A. Yes.

Q. And then at his request, you three signed the will, is that right? A. Yes.

Mr. Taylor: You may take the witness.

Cross-Examination

By Mr. Hurley:

Q. Whose pen did you sign with?

A. I don't remember whose pen I signed it with. [14]

Q. What?

A. I don't remember whose pen I signed with.

Q. Do you remember who gave you the pen?

A. No.

Q. And was Lou Colbert in bed when he signed it? A. Yes.

Q. How did he sign it?

A. How did he sign it?

Q. Yes, was he sitting up in bed?

A. More or less on an angle in bed, I guess.

Q. And what was the paper placed on when he signed it? A. Magazine or——

Q. What?

(Testimony of James F. Haynes.)

A. It was on a magazine or pad of some kind. I don't know just what it was.

Q. Where did you sign it?

A. Little table beside the bed I think.

Q. Now, how did you happen to go over there that afternoon?

A. Thelma Gregor asked if I would sign the will.

Q. Where were you when she asked you to sign the will? A. I was working.

Q. Where?

A. Independent Cab. I was driving a cab.

Q. And where did you see her?

A. She came to the stand and while I was taking her [15] home, she asked me if I would stop in and witness the will.

Q. And who was in the cab with you and Thelma Hayes? A. Nobody.

Q. What? A. Nobody, just us two.

Q. You just dropped over to the hospital?

A. Yes and I took her on home afterwards.

Q. And how long were you there?

A. Just a very short time. I don't remember how long it was. It wasn't long.

Q. Where did you first see Mr. Taylor?

A. Up in the hospital, first time I saw him.

Q. He was in the hospital and were these other gentlemen there? A. Yes.

Q. And you don't know what time of the day that was? A. It was in the evening.

Q. You mean after dinner or before?

A. As far as I remember, it was before dinner.

(Testimony of James F. Haynes.)

Q. Before dinner?

A. I am pretty sure I was working a day shift.

Q. You say you never saw Mr. Colbert before you went over there? A. Never before.

Q. You were there about five minutes? [16]

A. Five or ten minutes. I wasn't there very long, sir.

Q. Did you leave before the other people that were in there left or at the same time?

A. We all left about that time I think.

Q. Left together and who had the will, do you know, when you left there? A. I don't know.

Q. What? A. I don't know.

Q. Did you see what was done with it after it was signed? A. No.

Q. You don't know who took it or what became of it? A. No.

Mr. Hurley: That's all.

Redirect Examination

By Mr. Taylor.

Q. Mr. Haynes, was it dusk or dark when you went over there? A. It was dark.

Mr. Taylor: That's all.

The Court: That's all then. You want to keep this witness any more, Mr. Taylor, or Mr. Hurley?

Mr. Hurley: I don't.

Mr. Taylor. Sir? We are through with this witness, your Honor. If the Court please, we have made a diligent effort to find Mr. Cobbell, made inquiries of all the [17] cab stands and the com-

panies around here and I understand that he is now in town and that he will be available possibly in a short time and if Mr. Hurley would like to go ahead with his case, I think Mr. Cobbell will be the only additional witness that we will have so far as I know at the present time.

The Court: Did he testify at the other hearing?

Mr. Taylor: No, we were unable to find him, your Honor. He was in Anchorage but we were unable to get a hold of him. We made an effort now and was just informed Mrs. Hayes driving over the highway evidently contacted him somewhere between here and Anchorage and I think he will be available for testimony as to the execution of the will. That's all the testimony that he would have and unless of course—pardon me just a moment. He is our only other witness, your Honor. If we could call him later if Mr. Hurley would like to save time and go ahead with his witnesses.

Mr. Hurley: Well, if the Court please, I have some witnesses to testify but they won't be here until after noon. I didn't know that they were going to offer the testimony. We merely stipulated that the testimony of Dr. Schiabe would be entered and so I believed we had arranged for my witnesses to be here at two o'clock and it would be impossible for me to get them here before that time.

The Court: Can you get him here by 1:30, Mr. Taylor? [18]

Mr. Taylor: Sir?

The Court: Can you get Mr. Cobbell here by—

Mr. McCarrey: May I be heard on that, your

Honor? Mrs. Hayes just got in and found that Mr. Cobbell is here in town at the present time and as soon as she told me that I dispatched her immediately to go out and get him and that's where she is at the present time. She ought to be back in five or ten minutes and tell us certainly.

The Court: Very well. We will take a recess and then notify me when the witness gets here.

Mr. McCarrey: Very well, sir.

Mr. Hurley: I might say that these witnesses I have won't take more than 40—30 minutes. They're all short witnesses and that's the only additional witnesses that I have besides the ones that have testified in the former trial.

The Court: Very well, recess.

Clerk of the Court: Court is recessed.

The Court: Mr. Clerk, pursuant to stipulation of counsel by reason of the fact that they can't get their witnesses here until two o'clock, court is adjourned until two o'clock.

Clerk of the Court: Court is recessed until two o'clock.

(At 10:45 o'clock a.m., the court was recessed until two o'clock p.m.) [19]

(At 2 o'clock p.m., September 5, 1950, the court reconvened.)

The Court: I will take the file, Mr. Clerk.

Clerk of Court (Handing file to Court): Yes, sir.

Mr. McCarrey: Your Honor, it has come to my attention in reading the transcript of the court

reporter that page five and page six was inadvertently placed not in chronological order. Six came before five and at this time we also have a certificate made by Mr. Belida, the court reporter, which I would request at this time that this certificate of the transcript be put in the transcript of the record and also that page 5 and 6 be transposed so that they be in the proper order. I spoke to Mr. Hurley——

Mr. Hurley: We have no objection.

The Court: Very well.

Mr. McCarrey: While the Clerk is doing that, may I point out to the Court, we were unable to get a hold of Mr. Cobbell. We made telephone connections with Big Delta but right in the middle of the conversation, the phone operators cut it off and we were unable to get back through for about an hour. Therefore, it made it too late so we will be unable to have Mr. Cobbell come in and testify, but we have two witnesses who did witness the will.

The Court: You wish to proceed without Mr. Taylor? [20]

Mr. McCarrey: I don't have Mr. Taylor here, your Honor: I don't know why he isn't here. It's 2 o'clock.

Mr. Hurley: Have you other witnesses to go and put on?

Mr. McCarrey: No, we have not.

Mr. Hurley: No more?

Mr. McCarrey: Except in rebuttal possibly.

Mr. Hurley: We have three witnesses here we would like to call, your Honor.

The Court: I think we will proceed.

Mr. Hurley. Call Mr. Barrack.

JAMES E. BARRACK

called as a witness in behalf of the Appellee, being first duly sworn, testified as follows:

Direct Examination

By Mr. Hurley:

Q. What is your name?

A. James E. Barrack.

Q. And where do you live, Mr. Barrack?

A. Fairbanks.

Q. How long have you resided here in Fairbanks?
A. Forty-five years.

Q. Were you acquainted with Louis D. Colbert during his lifetime? [21]
A. Yes, sir.

Q. How long had you known him before he died?

A. (Pause): Oh, I can't recall my first acquaintance, but it is my present impression that I must have known him for 25 or 30 years.

Q. And where did you know him?

A. I knew him from my earlier years as a hardware and machinery dealer at the Sampson Hardware Company where I done considerable business with him from time to time during his mining operations from the time that I first knew him.

Q. And he was engaged here in mining, was he?

A. How's that?

Q. He was engaged in mining and prospecting?

A. Yes, sir.

Q. And were you well acquainted with him?

A. Very well.

(Testimony of James E. Barrack.)

Q. And do you remember when he became ill and went to the hospital in 1946? A. Yes, sir.

Q. And how long had he been in the hospital when you first heard about him being there?

A. Oh, possibly two or three days.

Q. You remember about what time that was?

A. It was in October, the first week I think or at the end of the first week or so in October '46. [22]

Q. And did you go over and see him after he was in the hospital in October, 1946?

A. Yes, sir.

Q. And you say the first time was two or three days after he went in the hospital?

A. Yes, sir.

Q. And then about how many times did you see him between that time and the 22nd of October?

A. I imagine—I can't exactly recall but I think that I was in there two or three times after that.

Q. I see. A. Yes, sir.

Q. And did you go to his room and visit with him? A. Yes, sir.

Q. And talk to him? A. I did.

Q. And was he in bed on those occasions?

A. Yes, sir.

Q. What was his condition there at that time when you visited him on those visits?

A. Well, I would say physically he wasn't as—he wasn't so bad, but his mind was in bad shape.

Q. What do you mean by "bad shape"?

A. Well, I mean that he was—his mind wasn't correct. His mind was wandering and it was—he

(Testimony of James E. Barrack.)

wasn't—he didn't really [23] know what he was doing or talking about.

Q. Can you remember some of the things he said that gave you that——

A. What impressed me most was the fact that his bed was up against the center of the room on the east wall of his room leaving an area and space between the bed and the south wall of his room of possibly, oh, six feet, and during the course of our conversation, why he likened that to the Tanana River or the slough out here and he was telling me about going on a trip and he says the boat is whistling right now and he says, and then he says, "We will see her very shortly coming around the bend" and he says, "She'll soon be here and then I'm going to take her." He likened that little area in there as the river or the slough and the boat was coming up this slough and that as soon as she got in, why he was going to go aboard her and sail down the river.

Q. Did he make any other remarks to you that indicated that he wasn't of sound mind?

A. Well, that was the principal one that I recall. He—after he referred to his going Outside to see his people and his—but anyhow, the thing that impressed me, made me believe that he was mentally incapacitated or goofy so to speak, why that this was a river and there was a boat coming around the bend and she had just whistled in. I knew that he was off his base at that time and I didn't recall

(Testimony of James E. Barrack.)

anything more particularly [24] because I didn't stay long.

Q. You had known him before, years before that, had you? A. Yes, sir.

Q. And was he mentally alert and keen and——

A. Always has been, yes, sir. He was a very fine fellow but with his deteriorated mind, why it was plain to be seen that he wsn't his former self by any manner of means.

Q. Would you say that he was of sound mind when you saw him on those occasions?

A. What would I say?

Q. Would you say he was of sound mind when—— A. No.

Q. What? A. Of unsound mind.

Mr. Hurley: That's all. You may cross-examine.

Cross-Examination

By Mr. McCarrey:

Q. Mr. Barrack—— A. Yes, sir.

Q. (Continuing): How many beds were there in the room when you went——

A. How many guests?

Q. Beds? A. Beds?

Q. Yes. [25] A. Just the one.

Q. And what side of the hospital was that on, Mr. Barrack? A. What's that?

Q. What side of the hospital was that bed on?

A. It was on that—on the south side.

Q. On the south side? A. Yes, sir.

(Testimony of James E. Barrack.)

Q. Now, did you ever go to visit Mr. Colbert when he died? A. Did I what?

Q. Ever go to visit Mr. Colbert when he died in the hospital?

A. At the time—before he died?

Q. Before he died, just a day or two prior to the time he died?

A. Well, I wasn't—I was there during the first two weeks, about, after he went in. He died I think about the—in the—well, I don't remember just what time he was in there. He was in there quite a while before he died, but I didn't see him. I just went to see him the first two or three times after he first went in to the hospital and I do not recall just the date of his death, but after I saw he was of unsound mind and incapable of intelligent conversation, I didn't go so often after that.

Q. Did Mr. Colbert know you when you went to the hospital? A. Did he know me?

Q. Yes.

A. Oh, I just don't exactly recall that. I believe that he [26] did though.

Q. Well, how do you know that he was of unsound mind and that there was only 1 bed in the room and you don't recall whether he recognized you or not, Mr. Barrack?

A. I didn't ask him if he recognized me when I went in there.

Q. Did he say, "Hello, Jim" or "Hello, Mr. Barrack"? A. Yes, sir.

(Testimony of James E. Barrack.)

Q. Then he did recognize you?

A. He recognized me, yes. It's—I didn't ask him if he did. I felt that he had. I just don't remember whether he said, "Hello, Jim" or "How are you" or—I can't say what the other man thought, but I assume that he knew me. A man that had done as much business as we did from time memorial so to speak, why, I would think—I thought that he knew me.

Q. But you do now state that he did say, "Hello, Jim," is that correct?

A. No, I don't say that. I don't.

Q. So you don't know whether or not he even recognized you?

A. I couldn't say that.

Q. Now, do you know whether or not Mr. Colbert died in '46 or '47?

A. It is my impression that he died—he was in there longer than '47. I don't remember when he died. I went to his funeral. I remember that.

Q. Do you recall whether or not he ever left the hospital [27] after he went in?

A. I believe that he did and I think he went in again, although I don't recall that either.

Q. Well, now, what time are you referring to when you state that you went over to visit him?

A. What time?

Q. Yes.

A. I am referring to the first two weeks that he was in the hospital.

Q. And what year was that?

A. '46.

Q. How do you know it was '46?

(Testimony of James E. Barrack.)

A. Well, because I recall the fact that he went in there at that particular time.

Q. How do you know he went in that particular time, Mr. Barrack? A. I am swearing to it.

Q. Yeah, but how do you know that?

A. How do I know it?

Q. Yes. What association do you have to swear to it that you know he went in the hospital in '46?

A. Well, my memory tells me that that is the time and my memory is usually reasonable good.

Q. But you don't remember when he died, although you went to his funeral, is that correct? [28]

A. Yes, sir.

Q. It may have been a year later or two years later, is that correct?

A. I think it was—he was in there longer. I am quite sure that he was in there longer. It must have been '47. I believe it was '47 that he died. I don't recall just exactly.

Q. And how long do you think he was there in the hospital, Mr. Barrack?

A. How long do I think he was?

Q. Yes.

A. I don't know how long he was in there.

Q. Now, do you recall whether or not you went in and visited him after he went back in the second time?

A. No. After he went in the second time, I—if he did go in, I don't know that he went in a second time, but it is my impression that he did.

(Testimony of James E. Barrack.)

Q. Well, you so testified. What I am trying to find out——

A. Well, I testified that it is my impression. I can't just exactly recall whether he did but I believe that he went back a second time.

Q. You didn't go to see him the second time?

A. No, I didn't go in after I found that he was in this unsound mental condition. I could see it wouldn't do me—him or myself any particular good to return, so I didn't.

Q. Mr. Barrack, did you ever see Mr. Colbert on the street [29] after you went in to visit him in the hospital that you recall? A. No, sir.

Q. Do you know whether or not he was ever on the street after that?

A. Well, it would be hearsay if I did. I never saw him.

Q. I asked you if you know. You don't know that? A. No.

Q. Do you know whether or not he ever resided on Graehl Island—over on Garden Island in Graehl after he got out of the hospital?

A. I heard that he did.

Q. But you made no attempt to go see him?

A. That's it.

Q. What other conversations did you have with Mr. Colbert at that time?

A. Well, we engaged in the conversation that I referred to shortly after going in and as soon as I saw that he was in that condition, why, I didn't try to——(Interrupted)

(Testimony of James E. Barrack.)

Q. Well, Mr. Barrack, I believe you testified that you went in three or four times, is that not correct? A. Yes, sir.

Q. Did you talk that same conversation all three times?

A. Oh, no, we didn't. The other conversations that we had later were just—I often used to go over for the Pioneers and visited the boys and I would perhaps just go in and pass [30] the time of day and asked him how he was and he would say that he was fine and some words to that effect, but I never attempted to stay for any length of time because it—there was a good many pioneers to visit and—a half a dozen or so and being busy, I didn't spend any time particularly with him.

Q. Just then on this one occasion that you refer to in talking about this space?

A. That's right.

Q. And it is your testimony is it, Mr. Barrack, that there was only one bed in the room?

A. One what?

Q. One bed in the room?

A. Well, that's all I recall at this particular time because he referred to that area between the south wall and the bed as being the river and so—
(Interrupted)

Q. Was there anybody present while you visited Mr. Colbert? A. No, not that I recall.

Q. Just you and Mr. Colbert?

A. Might have been somebody there. I don't remember now.

(Testimony of James E. Barrack.)

Q. Now did you testify, Mr. Barrack, that Mr. Colbert mentioned his family.

A. Did I testify that he mentioned his family?

Q. Yes.

A. No, I didn't. I said he was going Outside, take the boat as soon as it got into the—as soon as it tied up he was [31] going aboard.

Q. Was he going out to see his family on the boat? A. He didn't say.

Q. Now, Mr. Barrack, do you know whether or not Mr. Colbert was delirious from his sickness or illness or was he actually insane?

A. Well, I have my own ideas about that and I couldn't tell whether he was insane or not. Not being a physician, I wouldn't know.

Q. Well you have an opinion. You talked to him.

A. Yes, I would say he was mentally incapacitated.

Q. And he was mentally incapacitated on all those occasions you were there? A. Sir?

Q. And he was mentally incapacitated on all the occasions that you were there?

A. I would say yes.

Q. Wasn't he more lucid or more intelligent in his conversation on one occasion than on the other?

A. I presume if I attempted to draw him out I might be able to so testify, but I never was there long enough to say, but it was my impression that all the times after the first conversation that he was insane and for that reason I let—I just accepted it as being such and let it go at that.

(Testimony of James E. Barrack.)

Q. And you ascertain this fact on the first visit you were [32] there? A. Yes, sir.

Q. Do you know who the beneficiaries under his first will were by any chance?

A. Did I know——

Q. Who the beneficiaries were under his first will?

A. No, only by—I never saw the will. Just hearsay.

Q. When did you know through hearsay who the beneficiaries were under his first will?

Mr. Hurley: We object to that as incompetent, irrelevant and immaterial.

Mr. McCarrey: Well, I would like to show——

Witness: I refuse to answer.

The Court: Just a minute.

Q. Well now, Mr. Barrack, in that respect you're not here to refuse or not to refuse, but here to answer the questions propounded as permitted by the Court. So I will ask you again, if you recall when you first found out who the beneficiaries were under his first will?

Mr. Hurley: We object for the reason it is incompetent, irrelevant and immaterial. He wants to know if he heard what it contained. I don't see where that has any bearing on the case.

The Court: What is the relevency of it?

Mr. McCarrey: Well, your Honor, I want to [33] establish the fact that it is my understanding—I could be in error—that the Pioneers of the Territory of Alaska were the beneficiaries under the first

(Testimony of James E. Barrack.)

will and I want to find out if he knew that or when he knew that.

Mr. Hurley: We object to that if the Court please.

The Court: Objection overruled.

Mr. Hurley: The will itself shows what it contains.

Mr. McCarrey (To witness): Answer the question please.

The Court: Answer the question.

Witness: I had understood that among the beneficiaries were the Pioneers.

Mr. McCarrey: That's all.

Mr. Hurley: That's all, Mr. Barrack. Call Mr. Young.

FRANK YOUNG

called as a witness in behalf of the Appellee, being first duly sworn, testified as follows:

Direct Examination

By Mr. Hurley:

Q. What is your name?

A. Frank Young.

Q. Where do you live, Mr. Young? [34]

A. 1025—Third Avenue.

Q. In Fairbanks? A. Fairbanks.

Q. How long have you lived in Fairbanks?

A. Forty-four years.

Q. Were you acquainted with Louis D. Colbert during his lifetime? A. Yes, sir.

(Testimony of Frank Young.)

Q. How long had you known Mr. Colbert before he died? A. Oh, 25—30 years.

Q. And were you well acquainted with him?

A. Well, yes, I was.

Q. What?

A. Yes, I was pretty well acquainted with him.

Q. Do you remember hearing about his sickness when he went to the hospital in the fall of 1946?

A. Yes, I did.

Q. What? A. Yes, I did. I heard about it.

Q. And did you ever go over to see him after he went to the hospital in '46?

A. Yes, I was there to see him.

Q. And do you remember about what time it was that you went to see him?

A. As near as I can recall, it was about, around the middle [35] of October, something like that.

Q. And how did you happen to go over there?

A. Well, I went over there—I used to visit the sick for the Pioneers and I dropped in to see Lou because I knew him.

Q. And did you talk to him when you went in to see him? A. Yes, I did.

Q. How many times did you go and see him in October in 1946? A. I only went once.

Q. Just one time? A. Yes, sir.

Q. You say that was around about the middle of October?

A. As near as I can recall about the middle of October, yes.

Q. And what—in what condition did you find him when you went to see him there at that time?

(Testimony of Frank Young.)

A. Well, I talked to him for a minute or two and his mind didn't seem right to me.

Q. Did he say anything to you that made you think there was something wrong with his mind?

A. Yeah. He asked me if the boat was ready or something to that effect and I asked him what boat. He said they were getting the boat ready, he was going someplace. I don't quite remember where he told me, but then he said several little things that I don't remember that an average person to listen to could tell that he was not mentally correct.

Q. And what impression did you get from your conversation [36] with him as to the condition of his mind.

A. Well, I just excused myself and got out of there. I could see that he wasn't, by talking to him, that he was a little off on his conversation.

Q. Would you say that he was of sound mind?

A. No, he wasn't. Not at that time I was there he wasn't.

Q. What did he say about this boat?

A. Well, he asked me if the boat was ready and I asked him what boat and well he said this boat that I'm getting ready to go on, wherever he was going, and I said I don't know anything about the boat. I told him I didn't. I didn't know what boat he was talking about.

Q. Did he say anything more?

A. Well, he said several things but I just can't remember. It has been so far back.

(Testimony of Frank Young.)

Q. Did any of it make sense to you?

A. No, it didn't make sense to me.

Q. And from that conversation you decided that there was something wrong with his mind, that he wasn't of sound mind, is that right?

A. That's right.

Mr. Hurley: That's all. You may cross-examine.

Cross-Examination

By Mr. Taylor:

Q. What room was he in, Mr. Young? [37]

A. Well, I don't remember the number of the room but I think it was on the second floor. It might have been the third floor, right in the center of the building.

Q. Over on the north side, was it not?

A. When you come up the stairs and go down the hall, yes.

Q. And you had to turn and go towards the north side to get to his room?

A. No, the south side.

Q. Are you sure about that?

A. Yeah, I am sure.

Q. Isn't it a fact, Mr. Young, that he had a room when you come out of the stairs, up the stairs, you turn towards the west into a corridor and then turn north to go to his room?

A. Not when I seen him I didn't.

Q. Well, just what do you say?

A. Sir?

Q. Just when did you see him, the approximate date?

(Testimony of Frank Young.)

A. Well, I couldn't say the approximate date. It was sometime about the middle of October.

Q. I believe you testified that you heard that Mr. Colbert was sick, is that right? A. Yes.

Q. You didn't hear that he was insane?

A. No, sir.

Q. Now, when you went in there, what did he say? What were [38] his first words?

A. Oh, he said, "Hello, there, how are you?" Well I said, "How are you," something to that effect. He said he was feeling pretty good but when we come to talking, why the conversation he started out with I could see he was——

Q. Did he say, "Hello, Mr. Young" or "Hello, Frank"? A. Yes.

Q. He recognized you? A. Yes.

Q. And do you now how long he had been ill?

A. No, I didn't know how long he had been ill.

Q. Now, do you now whether that talk that you heard might be the result of delirium from his sickness or would it be insanity?

A. Well, that I couldn't state because I should think a doctor should know and I couldn't tell that. He didn't look like he had any fever to me or anything which might cause him to talk that way.

Q. But he was sick enough to be in the hospital, was he not?

A. He must have been. He was in there.

Q. Did you take his temperature?

A. No, sir.

Q. And now just after he said, "Hello, Frank"

(Testimony of Frank Young.)

and you said, "Well, how are you" and so forth, did he then talk about this boat? Did he immediately talk about the boat? [39]

A. Well, I don't recall if he spoke of the boat right away, but after we got talking a short time he did.

Q. What did you talk about up before the time he mentioned the boat? Did he talk clearly at that time up until the time he started mentioning the boat? A. Yes.

Q. So, up until the time he mentioned the boat, his mind was clear, he recognized you and he talked rationally until he got into this boat business, is that right?

A. That's right. He seemed to be all right until he started talking about the boat and there was something wrong about it, about the river. I can't remember now. It has been too far back, but—

Q. So he was lucid? He had lucid intervals up until the time he went talking about the boat?

A. Well, he appeared that way.

Q. Are you a member of the Pioneers, Mr. Young? A. Yes, sir.

Q. Did you know that the Pioneers were the beneficiary under Mr. Colbert's will that was drawn a number of years ago prior to going to the hospital? A. No, I did not.

Q. You say you never went back to see Mr. Colbert after that time?

A. No, I never did. [40]

(Testimony of Frank Young.)

Q. And do you know how long he remained in the hospital?

A. Well, if I can recall right, he was in there—he got out and then went back in again and was there several months and passed away. That's as near as my memory——

Q. You think he was back in there for two months after he went back?

A. Yes, I think he was all right.

Q. Couldn't it have been 2 weeks?

A. Well, I wouldn't know. I couldn't state how long he was in there but if I can—if my memory serves me right, I think he was in there and got out and back he went again.

Q. That wouldn't be the first time that you went over to see him, in fact, the only time to see him would it on the 22nd day of October?

A. No, it was about the middle, might have been the 20th.

Q. To your knowledge, to the best of your knowledge, he may have recovered from his illness, that his mind would be clear after that?

Mr. Hurley: We object to that, incompetent, irrelevant and immaterial, calling for a conclusion, nothing to base it on.

The Court: Objection sustained.

Q. But he was recovered to the point that he was released from the hospital?

Mr. Hurley: We object to that. He said he [41] didn't know anything about it. He wasn't over there, only what he heard.

The Court: Objection sustained.

Mr. Taylor: That's all.

Mr. Hurley: That's all, Mr. Young. Call Mr. Lutro.

ARTHUR LUTRO

called as a witness in behalf of the Appellee, being first duly sworn, testified as follows:

Direct Examination

By Mr. Hurley:

Q. What is your name? A. Arthur Lutro.

Q. Where do you live, Mr. Lutro?

A. 814-8th Avenue.

Q. Here in Fairbanks? A. Yes, sir.

Q. How long have you lived here in Fairbanks?

A. Present residence has only been 8 years.

Q. Did you ever live here before that?

A. Yeah, I was here for a trip in 1907.

Q. Were you acquainted with Lou Colbert during his lifetime?

A. I had known of Lou Colbert ever since 1914 when I went to the Ruby Camp. At that time he had been mining over on Trail Creek but I believe he had left the camp while I was [42] there. Talking to friends and prospecting experiences talking with others, why, I knew of him.

Q. When did you first meet him to know him personally?

A. Well, I first met Lou when I came up from Ruby in 1942.

Q. Did you get pretty well acquainted with him?

(Testimony of Arthur Lutro.)

A. Well, you know how old timers are, kind of stick together. We always talked to one another when we met. I never called on him at his home. I had quite a few conversations with him.

Q. You knew him pretty well?

A. Yes, I think I did.

Q. Do you remember when he took sick in 1946 and went to the hospital?

A. Yes, I remember that very well.

Q. And did you ever go and see him there at the hospital soon after he got sick in 1946?

A. Yes. I called on him I would say during his two sieges in the hospital that I said hello and said a few words to him forty or fifty times.

Q. And what would you say as to his mental condition there the first few times you went to see him——

Mr. Taylor: Just a moment.

Q. First I will ask about how long after he went in the hospital was it that you first went to see him?

A. Oh, I couldn't give you the exact date because I used to stop in the hospital on an average of three to four times a [43] week.

Q. Well, about how long after he first——

A. Well, it would be right away.

Mr. Taylor: Just a moment. Your Honor, I don't think there's proper foundation if he knows when he first went in the hospital. He stated——

Mr. Hurley: All right, I'll withdraw the question.

(Testimony of Arthur Lutro.)

Q. Do you remember when he first went to the hospital in 1946, the occasion of your hearing of his being in there?

Mr. McCarrey: Just a moment——

The Court: Our rules require one attorney to attempt to examine.

Mr. McCarrey: Very well sir.

Q. Do you remember the occasion of him—when he first went to the hospital in 1946?

Mr. Taylor: Just a moment, your Honor. We object to the question as leading and suggestive, answering a question by means of asking and we object to it.

The Court: Objection sustained.

Q. Do you remember when he went to the hospital in 1946?

A. I think it was in the fall of the year.

Q. Do you remember what month?

A. Yes, I would say it was in October.

Q. Do you know what part of October?

A. Well, I would say it would be the time right after the [44] Pioneer meeting because I remember very distinctly that our member of the Sick Committee reported at the Pioneer meeting which is the first Monday in October that he was ill and I don't know whether he was in the hospital or not. I couldn't state, but I knew he was in the hospital when I went there.

Q. Did you go over and see him in the hospital soon after he went there?

A. Why, sure I did.

(Testimony of Arthur Lutro.)

Q. And did you see him several times after that during the month of October, 1946?

A. Yes and I can relate that he used to always get lost around there and I would have to take him back to his room. I would find him in a different room and I would ask Lou what are you doing here. He would say, "I can't find my room."

Mr. Taylor: Just a moment Mr.—I move that the answer be stricken as not responsive to the question. The question was the times he went over there and not the circumstances of the visit.

The Court: Can you clarify that?

Mr. Hurley: How's that?

The Court: Can you clarify that matter?

Mr. Hurley: Yes.

Q. When you saw him—you saw him several times during October, did you? A. Yes. [45]

Q. And you say you saw him wandering around in the halls and other rooms? A. Yes, sir.

Q. And what excuses would he give by being in the wrong rooms?

A. Well, he wasn't all there. That was the cause of it.

Q. What do you mean "he wasn't all there"?

A. Well, his mind was wandering.

Q. Didn't know where his own room was?

A. No.

Q. You had to take him to his room?

A. Certainly.

Q. Did that happen on several occasions?

A. Yes, sir.

(Testimony of Arthur Lutro.)

Q. What was your impression from what you saw and heard him say as to his mentality?

A. I would say he was very very poor. He was—the slang word like a lot of the old timers were there losing their grip.

Q. You think he was mentally sound?

A. No, he was not.

Mr. Hurley: That's all, you may cross-examine.

Cross-Examination

By Mr. Taylor:

Q. Mr. Lutro, did you establish it was the month of October by the fact that Mr. Hurley asked you about October that you went over there? [46]

A. No, I wouldn't say that. I used to call on all those patients there and I knew it was in the fall of the year.

Q. But I believe you stated that you believed it was in '46. You weren't sure——

A. I knew it was in '46 because I know the funeral was in '47 so I know when he got sick.

Q. When did he die, Mr. Lutro?

A. He died—we buried him the 31st of May and he died a few days before that. I don't know the exact date.

Q. Now, how long did he remain in the hospital the first time, Mr. Lutro?

A. I remember that I went over there, it was the following month of November I believe and I asked the sister, "Where's Lou"? Well, she said there was a certain party took him out of here.

(Testimony of Arthur Lutro.)

"We didn't want him to leave, but he left." That's all I know.

Q. Now when you first went over in October, 1946, to see Lou, did he know you, Mr. Lutro?

A. Sure he knew me.

Q. And he talked to you about various things, about his condition——

A. No. I maybe only talked to him two or three minutes at a time because when I went over to the hospital, I did not go over particularly to see him. I was calling on all of the old timers over [47] there.

Q. But if you went in his room, did he say "Hello Art"?

A. No, he never did say that, never did. He knew I was from Ruby. I don't think he—I've got kind of a hard name. I don't believe he ever pronounced my name.

Q. What year did you say that you were in Ruby?

A. I was in Ruby from—off and on from 1914 to 1942.

Q. And Mr. Colbert remembered you from Ruby then?

A. No. He knew of me through my relatives down there, but I don't think I ever met Lou Colbert in Ruby.

Q. He remembered you through your relatives that you had been at Ruby then, is that right?

A. Yes. Yes, sir.

(Testimony of Arthur Lutro.)

Q. And mentioned the fact in his conversation with you over here?

A. Well, you know how it is when you go over there to see somebody, why, you don't—you talk mostly about their health and we didn't talk about any of our old experiences to the best of my knowledge.

Q. Did he inquire about any of his old friends from you, Mr. Lutro? A. No, he never did.

Q. Did you call on Mr. Colbert on the 22nd day of October, 1946?

A. I couldn't say to the exact date I was there or not on that date, no. [48]

Q. What room did Mr. Colbert occupy at the time that you were there, over there the first time you were in the hospital?

A. I know—it seems to me it was 200 and something. I know you come up the stairs and you turn to the right and go by the medicine room and it was on this wall side that faces the slough here.

Q. After he went back to the hospital the second time, did you go see him then?

A. I suppose I did because I was over there four or five times a week.

Q. And do you remember what room he had at that time?

A. Oh, I wouldn't—I know he was in some room there but I couldn't testify the exact room.

Q. Now, did that room have more than one bed in it that you remember?

(Testimony of Arthur Lutro.)

A. The room that I remember, yes, he had two beds in it.

Q. And you say you went up there and he was around in other rooms? A. Yes.

Q. Was he visiting with other patients?

A. No. He wandered from his room in his dressing gown and he didn't know where he was at.

Q. Did he by talking to the people in the other rooms—did you ever hear him have any conversations with people in other rooms? [49]

A. No, I don't think he would have any chance or he didn't know the people that were in the rooms. He would go down there to that ward way down there where there's five or six beds. I know I caught him down there once.

Q. Then I take it then from your answers that the sisters over there allowed an insane man to go wandering around in the hospital?

A. Why, you can go over there and you can see them wandering around. I don't know whether they're insane or not, in their dressing gowns.

Q. That statement hold true to Mr. Colbert?

A. Well, I wouldn't say that he was—I never testified that he was insane. He wasn't just all there I said.

Q. Mr. Lutro, do you visit sometimes sick people that are delirious or out of their head as for instance from illness?

A. No, I don't make it a practice of—

Q. However, I mean have you ever been to the hospital to see some of the pioneers or some friends

(Testimony of Arthur Lutro.)

of yours that you went in there and they would be delirious from fever or from their illness?

A. Sure I have.

Q. And have you ever went back and found that same person of clear mind when they had recovered from their bodily illness?

A. No. You could on your next visit, you might notice a little improvement, but you could still see that they were [50] still of unsound mind.

Q. You never saw one though that was in a delirium or out of their head because of illness and recover?

A. Well, I have known of cases where if they had the proper medical attention that they have, yes.

Mr. Taylor: That's all.

Mr. Hurley: That's all Mr. Lutro. That's all your Honor that we have in addition to what is already been taken in the record.

The Court: Do you have any rebuttal, Mr. Taylor?

Mr. Taylor: No, your Honor.

The Court: How much time do you gentlemen want for argument?

Mr. Hurley: I am perfectly willing to submit it without argument as far as I am concerned. The court has the testimony. It will have to be read anyway. I don't see where an argument is going to make any particular difference.

Mr. McCarrey: It is my understanding, your Honor, that you desire to have the transcript of

the record argued so that you wouldn't have to read it all. That was one of the reasons you requested that, is that correct?

The Court: Well, I was just assuming you want to make an argument. It wasn't that I wanted you to especially. Just whatever you wish.

Mr. McCarrey: Your Honor, I would like on behalf [51] of the contestant to argue briefly.

The Court: Very well. How much time do you want then?

Mr. McCarrey: I would like to have between 15 and 20 minutes if I may.

The Court: Twenty minutes?

Mr. McCarrey: Yes, your Honor, if that is not too excessive.

The Court: Is that you and Mr. Taylor together?

Mr. Taylor: Yes, sir.

The Court: Very well. We will take a recess now until three o'clock.

Mr. Hurley: It may be that I will want to reply.

The Court: Beg your pardon?

Mr. Hurley: It may be that I will want to reply briefly your Honor.

The Court: Oh, yes, yes.

(At this time, the court recessed until 3 o'clock p.m.)

(The court reconvened at three o'clock p.m.)

(Mr. McCarrey presented argument in behalf of the contestant.)

(Mr. Hurley presented argument in behalf of the appellee.)

The Court: I will take the matter under advisement.

(At 3:30 o'clock p.m., the trial of the above case was concluded and the court adjourned.)
3:30 p.m. [52]

Reporter's Certificate

I, Charles Belida, do hereby certify that I am the Official Court Reporter for the above-entitled court;

That upon the 5th day of September, 1950, I was the Official Court Reporter for the above-entitled court and that I attended open court proceedings on that day;

That the preceding fifty-two (52) pages constitute a full, true, complete and accurate record and transcript of all oral proceedings had in the above-entitled cause and that this record and transcript was made from my original shorthand notes taken at the trial of the above-entitled cause.

Dated at Fairbanks, Alaska, this 16th day of October, 1950.

/s/ CHARLES BELIDA,
Official Court Reporter.

Sworn to and subscribed to before me this 16th day of October, 1950.

[Seal] /s/ JOHN B. HALL,
Clerk of the Court. Notary Public in and for the
Territory of Alaska.

[Endorsed]: Filed Oct. 20, 1950. [53]

APPELLANT'S EXHIBIT A-1

In the Probate Court for the District of Alaska
Fourth Judicial Division
Fairbanks, Alaska
Probate Number 1145

In the Matter of
The Estate of Louis D. Colbert, Deceased
Attorneys

J. L. McCARREY,
Of Anchorage, Alaska,
Attorney for Petitioner,
Mrs. Thelma Gregor Hayes.

WARREN A. TAYLOR,
Of Fairbanks, Alaska,
Attorney for Petitioner,
Mrs. Thelma Gregor Hayes.

JULIEN A. HURLEY,
Of Fairbanks, Alaska,
Attorney for Defendant,
First National Bank of Fairbanks.

Date of Hearing: June 16, 1950.

Time: 10:00 a.m.

Place: United States District Courtroom,
Fairbanks, Alaska.

Before: Hon. Clinton B. Stewart, Ex-officio Pro-
bate Judge, Fourth Judicial Division, Fair-
banks, Alaska.

Appellant's Exhibit A-1—(Continued)

PROCEEDINGS

The Court: Are you ready to proceed?

Mr. Taylor: Ready.

Mr. Hurley: Ready.

The Court: You may proceed.

Mr. Taylor: If the Court please, I would like to have Mr. McCarrey of Anchorage and Mr. Bogges as co-counsel in this case.

The Court: Very well.

Mr. Taylor: And we would like to also ask that all witnesses be put under the rule, excluded from the courtroom until called to testify.

The Court: Very well. All the witnesses who have been called to testify in this matter this morning will absent themselves from the courtroom.

(The witnesses left the courtroom.)

Mr. Taylor: If the Court please, I will be a witness in this case and I ask that I be exempt from the rule as one of the attorneys in the case although I will not argue the case. I believe that is the rule.

Mr. Hurley: I haven't any objection and I expect to testify—— (Interrupted.)

The Court: You do?

Mr. Hurley: Yes, myself same as Mr. Taylor.

Mr. Taylor: I will stipulate—— (Interrupted.)

Mr. Hurley: I would like to be permitted [1*] to present the argument.

Mr. McCarrey: Your Honor, do you care to have an opening statement on this? What is your pleasure in that respect?

* Page numbering appearing at foot of page of original Reporter's Transcript of Record.

Appellant's Exhibit A-1—(Continued)

The Court: Perhaps we better have. It would be better to have an opening statement, brief opening statement at any rate due to the number of files that are actually involved.

Mr. McCarrey: Very well, your Honor. Your Honor, Mr. Hurley, I would like to make a rather succinct opening statement pertaining to the facts of this case and also the issues to be determined by your Honor. As it is no doubt well known by your Honor, Mr. Colbert lived in the Territory of Alaska for a long time prior to his demise.

Sometime during the year 1938 he made and executed a will. He was very active in mining work throughout the territory and also was a very prominent individual. During the year 1946 he became, with the passing of years, not too well in health and in October the 22nd, 1946, he made and executed a will. We will show, Your Honor, that subsequent to executing the first will on October 26, 1946, that he subsequently thereto made and executed another will at his request and that thereafter he had three witnesses put on the second will instead of two as were placed on the first one at his request; that sometime after he had executed [2] these wills, as a matter of fact, some two days, a petition was filed by the First National Bank alleging that he was incompetent to handle his own affairs and asked to be appointed as guardian ad litem of the person and property of the said L. D. Colbert.

After the customary notice of hearing and after

Appellant's Exhibit A-1—(Continued)

one or two continuances, I believe it was on or about the 19th day of October, he was declared incompetent by the Commissioner and letters of guardianship were issued to the First National Bank with Albert Visca being the first trust officer of the bank, if my memory serves me correct. We will show that Mr. Colbert was not incompetent. He was not present at the trial. We will also show that he was able to carry on his own business. We will further show that he came home after the trial to the home of Thelma Gregor Hayes who had a cocktail bar over on Graehl Island—on Garden Island over in Graehl. We will show that for many years prior to the fall of 1946 and to the time that these two wills were executed, that Mr. Colbert was a personal friend of the Gregor family and particularly of Thelma Gregor and that he had loaned her on many occasions various sums of money and that she had been very active in assisting him in the management of his affairs. We will show that Mrs. Gregor Hayes—Thelma Gregor Hayes, more commonly known as Hayes, did expend considerable sums of money to make him comfortable and to provide [3] for him in his last sickness and that on or about the 24th day of May, 1947, after he had fallen in a water hole and became very sick with pneumonia, he died.

The facts I think aside from that are very well known before your Honor. The files are before you with reference to the proceeding of the probate of the estate, also executed letters of the guardian-

Appellant's Exhibit A-1—(Continued)

ship. There is only one thing for you to determine and that is this: whether or not at the time that L. D. Colbert, more commonly known as Lou Colbert, executed his will on the 26th day of October, 1946; that he was of sound and disposing mind and memory and competent to execute the same. It is our belief in the case and we will attempt to prove it as such to your Honor. Thank you.

Mr. Hurley: May it please the Court, there is no question about the issue. Pleadings clearly show what the issue is. The evidence on behalf of the First National Bank will show that on the 22nd day of October and for some time prior thereto and for a long time thereafter, that the deceased, Lou Colbert, was not of sound and disposing mind and memory, not competent to handle his own affairs and was not competent to execute a valid will.

Mr. McCarrey: Your Honor, we would like to call Mr. Arthur A. Benz. Do you have a bailiff?

The Court: No, we haven't.

(Mr. Arthur A. Benz was called into the courtroom.) [4]

Mr. Hurley: What's the name?

Mr. McCarrey: Benz. B-e-n-z.

Mr. Hurley: Is the file your Honor in that other case which contains the represented will that was presented by Thelma Gregor?

The Court: Is it here?

Mr. Hurley: Yes.

The Court: Yes.

Appellant's Exhibit A-1—(Continued)

Mr. Hurley: Could I see that just a second?

(Mr. Hurley approached the bench and looked at a document.)

Mr. Hurley: What's the name, Benz?

Mr. McCarrey: Benz, Arthur A.

Mr. Hurley: I see.

The Court: Will you step forward to be sworn?
Will you come right up here?

ARTHUR A. BENZ

called as a witness in behalf of the petitioner, being first duly sworn, testified as follows:

Mr. McCarrey: Your Honor, may I rise to a point of information and that is this. At our request, we have asked the gentleman to make a reporting on this hearing. Now he is the official court reporter so he doesn't have to be sworn. We would like to have this record kept. [5]

Mr. Hurley: Certainly he is qualified to take it.

Mr. McCarrey: Just so that the record shows that that is understood, that's all.

Mr. Hurley: There is no necessity as far as that is concerned.

Mr. McCarrey: As long as there's no question——

Mr. Hurley: No question about his competency.

Direct Examination

By Mr. McCarrey:

Q. Will you state your name please?

Appellant's Exhibit A-1—(Continued)

(Testimony of Arthur A. Benz.)

A. Arthur A. Benz.

Q. Will you spell your last name?

A. B-e-n-z.

Q. Where do you reside? A. 103 Wendell.

Q. Will you speak louder so that the Court can hear please? Where do you reside?

A. 103 Wendell.

Q. Fairbanks, Alaska? A. That's right.

Q. How long have you resided in Fairbanks, Alaska, Mr. Benz? A. Since July, 1946.

Q. Were you ever acquainted with a man named Louis D. Colbert?

A. Yes, I met the gentleman. [6]

Q. When did you meet him?

A. In July when I come to Fairbanks.

Q. Fairbanks, Alaska? A. That's right.

Q. How long were you acquainted with Mr. Colbert?

A. Well, I was working for Thelma Gregor. I met him through her.

Q. And whereabouts were you working at that time?

A. I went to work for Graehl Circle Bar.

Q. Now I will ask you if you know whether or not Mr. Colbert ever came over to the Graehl Circle Bar? A. He did.

Q. As a matter of fact, he lived there did he not?

A. He did after he came out of the hospital. Before that, he visited.

Appellant's Exhibit A-1—(Continued)
(Testimony of Arthur A. Benz.)

Q. Do you know when he went to the hospital, Mr. Benz?

A. I think it was in—end of September, something like that.

Q. Of 1946? A. That's right.

Mr. Hurley: What was that?

Witness: I think he went to the hospital end of September, somewhere around September, as much as I can remember.

Q. Did you ever have any occasion to go to the hospital [7] while Mr. Colbert was there?

A. I went there quite a few times.

Q. For what purpose? A. To visit him.

Q. Did you ever have a conversation with him?

A. That's right.

Q. Did you ever have occasion to sign as a witness on an instrument for Mr. Colbert?

A. I did.

Q. Who requested you to sign that as a witness?

A. Nobody. I was in there visiting that night.

Q. You were in there visiting that night?

A. That's right.

Mr. McCarrey: Your Honor, I would like to rise for another point of information and that is this. Does the Court consider that all these exhibits and all these documents before this Court are in evidence?

Mr. Hurley: What documents do you—

Mr. McCarrey: In 1114, 1145 and 1141.

Appellant's Exhibit A-1—(Continued)

(Testimony of Arthur A. Benz.)

Mr. Hurley: Do you want those files all introduced?

Mr. McCarrey: I do, yes, unless the Court considers—— (Interrupted.)

Mr. Hurley: Well I don't think they can consider them introduced but I haven't any objection to the [8] files if you offer them.

Mr. McCarrey: At this time, we offer the exhibits in file 1114, 1141 and 1145 respectively as exhibits in this case.

Mr. Hurley: Now, what is 1141 so that I can get this down?

Mr. McCarrey: 1141 is the petition by the First National Bank.

Mr. Hurley: I see.

Mr. McCarrey: 1145 is the petition by Thelma Gregor Hayes and 1114 is the guardianship proceedings of the First National Bank. Your Honor, since there is no objection, may we consider those then before your Honor?

The Court: Yes.

Mr. McCarrey: May I have file 1145? It might be advisable, Your Honor, to if I may so suggest, that you take the will from that file. I don't know what the Court's pleasure is or maybe we can handle the whole file.

The Court: Take the whole file and then later on I'll decide whether it will be more convenient to take it out.

Mr. McCarrey: Very well.

Appellant's Exhibit A-1—(Continued)
(Testimony of Arthur A. Benz.)

Q. (By Mr. McCarrey to Witness): I hand you, Mr. Benz, a document purporting to be the last will and testament of Mr. L. D. Colbert. I will ask [9] you if you have seen that instrument before? A. I have.

Q. Does your signature appear thereon?

A. Right there on the second line down.

Q. And at whose request did you put that on?

A. On my own.

Q. Did anybody ask you to sign that?

A. Yes, they asked me if I wanted to witness on it. There was three that were there.

Q. And——

Mr. Hurley: Will you speak just a little bit louder?

A. I said that's my signature down there. I said there was three there at the same time and they asked me to put it down.

Q. And did you see Mr. Colbert sign?

A. Yes.

Q. Was there anybody holding his arm at that time? A. No.

Q. Was anybody pointing a gun to his head?

A. No.

Q. Did he do that of his own free will?

A. He did.

Q. And I'll ask you whether or not if Mr. James F. Haynes was there at that time?

A. He was there. I was introduced to him but—

Appellant's Exhibit A-1—(Continued)

(Testimony of Arthur A. Benz.)

he was a [10] truck driver but I don't know the gentleman, but I do know Mr. Kobbell.

Q. And was Mr. V. A. Kobbell there at the time?

A. Yes.

Q. And did Mr. Kobbell sign this will in the presence of Mr. Haynes and Mr. Colbert?

A. That's right.

Q. And did Mr. Haynes and Mr. Kobbell sign in your presence? A. That's right.

Q. And did you sign in their presence?

A. That's right.

Q. Is this your signature on the reverse side there? A. That's my signature.

Q. Now, Mr. Benz, I believe you testified that you had been to see Mr. Colbert on several occasions? A. That's right.

Q. And that you had a conversation with him?

A. I have—I had.

Q. Do you have an opinion as to whether or not Mr. Colbert was of a sufficient and proper mental capacity to carry on a conversation?

A. That's right, he was. I think he was one of the smartest men to talk to, that I have ever talked to in Fairbanks.

Q. What did you talk about, Mr. Benz?

A. Mining. [11]

Q. Do you know anything about mining?

A. I've been out, yes.

Q. Did Mr. Colbert talk sanely about mining?

A. That's right, he did. He told me how he

Appellant's Exhibit A-1—(Continued)
(Testimony of Arthur A. Benz.)

made a gold strike over at Atlantic which—when he made \$2,000 a day and how he got— (Interrupted.)

Q. You do believe that he was mentally competent at that time? A. Absolutely.

Q. Do you have an opinion as to whether or not he was mentally competent at the time he signed the will? A. I do.

Q. Do you know why he was in the hospital?

A. He wasn't feeling good.

Q. But you feel that his mind was active and alright? A. Absolutely.

Q. Did he know who were the people that were there that evening? A. That's right.

Q. I will ask you, Mr. Benz, whether or not you signed another will for Mr. Colbert about that same time? A. Just before that.

Mr. Hurley: Could I see that? Is this another will that's not in the file?

Mr. McCarrey: That's correct. Your [12] Honor, we would like to have this marked as our exhibit for identification.

(Last will and testament of Louis D. Colbert, dated 22nd day of October, 1946, was marked for identification as Petitioner's Exhibit 4.)

The Court: You offer the probate files? I mean, you offer the probate files?

Mr. McCarrey: We do, in addition to this.

Mr. Hurley: What?

Appellant's Exhibit A-1—(Continued)

(Testimony of Arthur A. Benz.)

The Court: He offered the probate files that were under discussion previous thereto and I was wondering if I should give those an exhibit—mark those as exhibits.

Mr. Hurley: Very well.

The Court: This will be marked Petitioner's Identification number four.

Mr. McCarrey: Thank you.

Q. (By Mr. McCarrey): I hand you this instrument which purports to be the last will and testament of Mr. L. D. Colbert and ask you whether or not your signature appears thereon?

A. That's my signature here.

Q. And I'll ask you if you know who asked you to sign that as a witness on that?

A. I do not remember.

Mr. Taylor: Could we interrupt just a [13] moment? What was the number or letter of that exhibit?

The Court: Identification number four. The files will be marked as follows: probate 1114 Petitioner's Exhibit "A," probate 1141 Petitioner's Exhibit "B," and probate 1145 Petitioner's Exhibit "C."

Mr. McCarrey: And this will be then "D" or "4"?

The Court: "D."

Mr. McCarrey: When it's in there.

Q. (By Mr. McCarrey): I will ask you if you know whose signature this is here?

Appellant's Exhibit A-1—(Continued)
(Testimony of Arthur A. Benz.)

A. Mr. Colbert's.

Q. Did you see him fix that signature to this?

A. That's right.

Q. And who was present at that time?

A. I can't remember. I know on the other one, on this one here, when I signed that, there was a cab driver, Mr. Kobbell.

Mr. McCarrey: Your Honor, we have a P.A. system here we can use.

Witness: I've got a low voice today.

Mr. McCarrey: If I may hand this to the witness?

The Court: Yes.

Mr. McCarrey: Just speak into that please. [14]

Q. (By Mr. McCarrey): Do you know, Mr. Benz, where—strike that please.

Mr. McCarrey: We offer this in evidence, your Honor as Contestant's Exhibit number "D."

The Court: It will be marked Petitioner's Exhibit "D."

(Last will and testament of Mr. Louis D. Colbert, previously marked Petitioner's Exhibit 4 for identification was received in evidence and marked Petitioner's Exhibit "D.")

Mr. McCarrey: "E"?

The Court: "D."

Mr. McCarrey: "D"?

The Court: "D" as in dog.

Mr. Hurley: What's the purpose of this?

Appellant's Exhibit A-1—(Continued)

(Testimony of Arthur A. Benz.)

Mr. McCarrey: The purpose of this is to show that the testator was of testamentary capacity at that time, knew what he was doing and made a request to have the second will withdrawn for the very purpose that it wasn't exactly as he desired it.

The Court: It may be admitted as Petitioner's Exhibit "D."

Q. (By Mr. McCarrey): Mr. Benz, calling your attention to the second will, did Mr. Colbert make any remarks that it was his last will [15] and testament? A. That is something I couldn't say.

Q. Was there—

Mr. Hurley: What's that? Would you speak louder?

Witness: I cannot say that.

Q. (By Mr. McCarrey): Was there any discussion about a last will and testament at the time?

A. Yes, there was. He asked me to be a witness on that so I signed my name on that, on his last will.

Q. Who did that? A. Mr. Colbert.

Q. He asked you to himself, didn't he?

A. That's right.

Q. So he knew that it was his last will and testament? A. I presume so.

Q. Now, Mr. Benz, I will ask you if you know whether or not Mr. Colbert was pretty well taken care of for food and clothing at the Graehl Circle Bar? A. I think the very best.

Q. How do you know that?

Appellant's Exhibit A-1—(Continued)
(Testimony of Arthur A. Benz.)

Mr. Hurley: We object. Just a minute. We object to this as incompetent, irrelevant and immaterial, no proper foundation laid and as far as the evidence is concerned, [16] he wasn't taken care of at all until long after this——

Mr. McCarrey: I object, your Honor. If Mr. Hurley wants to testify, I ask that he be sworn as a witness.

Mr. Hurley: I am not testifying. I am just saying that there is nothing in the evidence—— (Interrupted.)

Mr. McCarrey: Make your objection properly so the Court can rule.

Mr. Hurley: I am not testifying because this is not according to the evidence, what is in evidence here. That happened after that—the will was signed. According to this witness, he went over there after he had been in the hospital and after he was supposed to have signed this will. What happened afterwards doesn't have anything to do with this case.

Q. (By Mr. McCarrey): Mr. Benz, do you know whether or not Mr. Colbert resided at Circle Graehl Bar before he went to the hospital and signed this will? A. He came over at times.

Q. He came over at times?

A. That's right.

Q. As a matter of fact, you were working there?

A. That's right.

Appellant's Exhibit A-1—(Continued)

(Testimony of Arthur A. Benz.)

Q. And he came over quite frequently, didn't he?
A. That's right. [17]

Q. And did he ever have any meals when he came over?
A. Absolutely.

Q. Whom did he come over to see if you know?

A. Well, I think he came over to see Thelma.

Q. Anybody else?

A. Not that I could recall.

Q. Do you know whether or not Mr. Colbert came over for business reasons or personal reasons?

A. I could not answer that either.

Q. Do you know where Mr. Kobbell lives at the present time?
A. I could not say.

Q. The witness for this will. You don't know?

A. No, I do not.

Q. Do you know where Mr. Haynes is?

A. No. I met the gentleman that night. That is the first time I met him.

Q. Did you ever meet him after that?

A. Yes, I seen him. We never talked about anything like that.

The Court: Speak right into the microphone so that the reporter can hear you.

Mr. McCarrey: That's all.

Cross-Examination

By Mr. Hurley:

Q. You came to Fairbanks in July, 1946?

A. That's right.

Appellant's Exhibit A-1—(Continued)
(Testimony of Arthur A. Benz.)

Q. Where did you live before that? [18]

A. Anchorage.

Q. What? A. In Anchorage.

Q. How long have you lived in Alaska?

A. I've been up since 1928 when I first come here.

Q. I see. And how long had you been here before you met Lou Colbert?

A. Not quite a month even.

Q. What? A. Not even a month yet.

Q. You came here in July?

A. Yeah. I went to work for Thelma Gregor.

Q. And it wasn't a month until you met Lou?

A. That's right.

Q. Less than a month? A. Yes.

Q. Where did you meet him?

A. Over at the Graehl Circle Bar.

Q. I see. And how often did he come over there after you first met him?

A. Well, I don't know how often.

Q. Well, about how often? Once or twice a week? A. Well, in that neighborhood.

Q. I see. And that's the way you got acquainted with him? A. That's right. [19]

Q. What were you doing at the Graehl Circle Bar?

A. I was a handy man and extra bartender.

Q. You were a bartender there?

A. That's right.

Appellant's Exhibit A-1—(Continued)

(Testimony of Arthur A. Benz.)

Q. Now you say on the 22nd day of October, 1946, you saw Lou Colbert sign two wills?

A. One.

Q. You saw him sign—I thought you said you——

A. One before that.

Q. What day was that on?

A. I do not know.

Q. Well, does it show on the will what day?

A. I don't even know when the last one was signed on. I never stated that.

Q. Well, was it, was it the same day that——

(Interrupted.) A. Just before that.

Q. I say, was it the same day that he signed the last will with the 3 witnesses' names on it?

Mr. McCarrey: Just a moment. I want to object unless he shows him the instrument he is cross-examining him about. I think the rule is he's got to show him.

Mr. Hurley: Yes, I'll show it to him.

Q. (By Mr. Hurley): What time of the day was it that this first will was signed? [20]

Mr. McCarrey: Well, your Honor, which one is he referring to?

Mr. Hurley: The first will he saw Lou Colbert sign. Your exhibit "D." The exhibit "D."

Q. (By Mr. Hurley): The first will you say you saw him sign, what time of the day was it?

A. I do not remember. That's four years ago.

Q. About what time of the day was it?

A. I couldn't say.

Appellant's Exhibit A-1—(Continued)
(Testimony of Arthur A. Benz.)

Q. You don't remember what day it was?

A. No.

Q. Well, look at the will and see if you can, from looking at it, what day it was? A. I cannot.

Q. You can't? A. No.

Q. And you don't have any idea whether it was in the forenoon or the afternoon or the evening when this first will was signed?

A. I couldn't say.

Q. And witnessed by you?

A. I couldn't say right now.

Q. What time of the day was it that the last will was signed? [21] A. In the afternoon.

Q. In the afternoon? Didn't you say in your direct examination that it was in the evening?

A. It was in the afternoon.

Q. But I say, didn't you say just a little while ago in answer to a question by the attorney on the other side that it was in the evening that you witnessed the last will and testament of Lou Colbert?

A. In visiting hours when we went in the afternoon between 7 to 9.

Q. Between 7 to 9 in the evening?

A. Yes, that's right.

Q. That's in the afternoon, is it?

A. It is to me.

Q. I see. And you don't know whether this first one that you say was the first one you saw him sign, was that that same day or was it on another day that you saw him sign?

Appellant's Exhibit A-1—(Continued)

(Testimony of Arthur A. Benz.)

A. I can't remember that.

Q. How did you happen to be over there?

A. Because I visited him.

Q. Were you visiting him on that day, the 22nd of October? A. No.

Q. How long were you visiting him?

A. I visited him quite frequently.

Q. How many times on the day that he signed the will did [22] you visit him?

A. I do not know.

Q. You don't know? That was the last will, you don't know how many times you were there?

A. No.

Q. How long did you stay?

A. Half an hour.

Q. And who was present when the last will and testament, the one that you signed last, that you said was in the afternoon and that you also said was in the evening, who was present at that time?

A. Kobbell. I don't know him. He used to drive a cab here.

Q. Who else?

A. Mr. Haynes. I met him there.

Q. Who else?

A. And Mr. Warren Taylor.

Q. Who else?

A. That's as much as I know.

Q. Was Thelma Gregor there?

A. She might have been there, but I can't remember.

Appellant's Exhibit A-1—(Continued)
(Testimony of Arthur A. Benz.)

Q. You don't remember. Did you see a nurse there? A. Yes, I seen a nurse there.

Q. That same time? A. That's right.

Q. And who asked you to sign the will? [23]

A. They asked if I would witness it.

Q. Who.

A. Warren Taylor here. He asked me if I would be a witness.

Q. And you say there were nurses around there?

A. As far as I know, they were in there and out all the time.

Q. Did you hear any of them asked to witness the will? A. No.

Q. And you say that—when was it you became especially friendly with Mr. Colbert?

A. Right after I met him because he was interesting to talk to. He is well educated.

Q. What? A. He was well educated.

Q. How often did you go over to see him at the hospital? A. Two or three times a week.

Q. And how long had he been there before he signed this last will, you say?

A. I would say 20 days anyway.

Mr. Hurley: I see. I think that's all.

Mr. McCarrey: No re-direct, your Honor. Mr. Hurley, will you have any occasion to call the gentleman back?

Mr. Hurley: I don't think so.

Mr. McCarrey: All right if he stays here in court then? [24]

Appellant's Exhibit A-1—(Continued)

Mr. Hurley: Why, not if he's going to be a witness again for any purpose.

Mr. McCarrey: I don't think so.

Mr. Hurley: Well, if he isn't, it is all right. If you don't recall him.

Mr. McCarrey: I don't need him any more.

Mr. Taylor: You work, Mr. Benz?

Mr. Benz: No.

Mr. McCarrey: You can stay here if you want to or do whatever you want to.

I call Mr. Warren Taylor.

WARREN A. TAYLOR

called as a witness in behalf of the petitioner, being first duly sworn, testified as follows:

Direct Examination

By Mr. McCarrey:

Q. Your name is Warren A. Taylor?

A. Yes, sir.

Q. And you're a practicing attorney, admitted to the bar here in Fairbanks, Alaska?

A. Yes, sir.

Q. Were you ever acquainted with Thelma—L. D. Colbert, more commonly known as Lou Colbert?

A. Yes, I was. [25]

Q. When did you first meet Mr. Colbert, Mr. Taylor? A. In early—in the fall of 1944.

Q. Were you very well acquainted with Mr. Colbert?

A. I was quite well acquainted with Mr. Colbert.

Appellant's Exhibit A-1—(Continued)
(Testimony of Warren A. Taylor.)

Q. Did you have occasion to see him frequently?

A. Yes, I did. I know before he went to the hospital for a long time I used to talk to him on the street and occasionally he would drop in the office.

Q. As a matter of fact, you did legal work from time to time?

A. Yes, I did do some legal work for him.

Q. Now, will you please tell the court what kind of man Mr. Colbert was?

A. Well, Mr. Colbert impressed me as a man who had a very good background educationally. He talked intelligently and from his conversation I assumed that he had at one time had been a man of some substance and good background.

Q. Do you know what his business was?

A. He had been engaged in mining for quite a number of years in Alaska and then he had I think some rental property here in Fairbanks which he derived an income from.

Q. What kind of mining was he engaged in?

A. Placer mining I believe.

Q. Was he very active in social affairs?

A. Well, not so much in social affairs. He had been quite [26] active politically.

Q. Do you recall what party he belonged to?

A. Republican Party.

Q. As a matter of fact, he ran several times, did he not?

Appellant's Exhibit A-1—(Continued)

(Testimony of Warren A. Taylor.)

A. He had been a candidate and I used to talk politics with him often.

Q. I'll ask you if you know whether or not Mr. Colbert was pretty well known in and around Fairbanks and the Fourth Judicial District?

A. Yes, he was very well known.

Q. Now I will ask you if you had occasion on or about the 22nd day of October, 1946, to prepare a last will and testament for Mr. Colbert?

A. Yeah, I did.

Q. Will you tell the court the circumstances surrounding that?

A. During the—I believe it's on the 21st—Mr. Colbert sent word or I believe it was by telephone from the hospital to one of the nurses that Mr. Colbert wanted to see me and I went over in the afternoon and he told me that he wanted to draw up a will and I asked him about the property, who his heirs were or who he wanted to name as beneficiaries under the will and he gave me the necessary information. I went back to the office. It was fairly late in the afternoon when I got the will prepared and that evening, it was fairly late, [27] I went to the hospital and he executed the will at that time in the presence of Mr. Benz and Mr. Kobbell—Kubbell I believe you pronounce it.

Q. Now, was Mr. Kobbell and Mr. Benz present at the time he signed his will?

A. Yes, they were.

Q. Were you also present, Mr. Taylor?

Appellant's Exhibit A-1—(Continued)
(Testimony of Warren A. Taylor.)

A. Yes, sir.

Q. What was the state of Mr. Colbert's mind at that time with reference to his property?

Q. Well, it was very clear. He talked intelligently. We visited on a number of subjects. He said he wanted to dispose of his property because he had been quite ill and I discussed it with him and he was very lucid, very clear in his mind about what he wanted to do with it.

Q. What did he know about the bounty or the fruits of his property he asked to dispose of?

A. I didn't quite get the question.

Q. Well, did he know anything about the bounty or the fruits of his property as to make disposition thereof in a last will and testament?

A. Well, he told me what property he possessed and he said he owns a number of mining claims, but he didn't—he said there were quite a few of them. He had a list of them but he didn't have them there so I didn't include anything that [28] he had under the provisions of the will that he was going to make.

Q. Did you have a discussion with him with reference to the beneficiaries who were to receive his property under his will?

A. Yes, sir I did.

Q. Did he talk about them?

A. Oh, yes; he did.

Q. What did he say?

A. He told me he had a sister living in the east,

Appellant's Exhibit A-1—(Continued)

(Testimony of Warren A. Taylor.)

Emma Colbert. I think she was a spinster. I don't think she had ever been married and he wanted her to have \$25.00 a month for the rest of her life. The balance of the property was to go to Thelma Gregor Hayes as she had been very good to him during the years that she had known him.

Q. Now, did he tell you that?

A. That's what he told me.

Q. Did you ever have any discussion with him about a brother of his?

A. No, I don't remember any discussion about a brother. He mentioned a sister. I believe he had two sisters. One of them is dead.

Q. Do you know whether or not the brother had died?

A. No. I had no information regarding that.

Q. Do you feel that Mr. Colbert knew what he was doing at the time he was requesting you to make a will? [29]

A. Very extremely clear in his mind. He talked on a number of subjects, especially that, and I feel that he was just as competent as any average person would be to make a will at that time.

Q. Now, you heard Mr. Benz testify that there was another will? A. Yes, sir.

Q. I wonder if you would mind telling the court the circumstances surrounding the execution of that?

Mr. Hurley: Which one are you referring to now?

Appellant's Exhibit A-1—(Continued)
(Testimony of Warren A. Taylor.)

Mr. McCarrey: The second will on that same day.

A. The first will I believe was, Mr. McCarrey, is the one marked Exhibit "D." That's the one when we went over there it was late at night. I think it was pretty close to midnight when we went there. And then the next day or the next morning, Mr. Colbert had one of the nurses phone for me to come back and said that he had been thinking over the disposition of the request to his sister and he thought that it would be better if she was paid a lump sum rather than pay it at the rate of \$25.00 a month. You derive more good out of it by getting a lump sum and incidentally, he told me that she was in fair circumstances and didn't really need the money but he was going to give her the thousand dollars anyway. [30] And so then he also said that he wanted some of this property, he might want to sell some of it, various parcels of property, before he died and he asked me if I would put in the will a proviso that he would sell, he could sell anytime prior to his death. I didn't think it was necessary to put it in but he wanted it in there so I included it in the new will.

Q. Mr. Taylor, did you go over to talk to Mr. Colbert after the nurse called you about the second will?

A. Yes, that's what I did. I went over and had a talk with him and that's when he explained how he wanted the bequest to his sister changed.

Appellant's Exhibit A-1—(Continued)

(Testimony of Warren A. Taylor.)

Q. And what was the condition of his mind at that time?

A. Very clear. He had given it quite a bit of thought and talked lucidly as you are now at the present time.

Q. You feel then that he was very well aware of his request to you and the ultimate results of that bequest? A. Oh, yes; absolutely.

Q. Did you prepare a second will, Mr. Taylor?

A. I did.

Mr. McCarrey: May I have Exhibit "D" please?

Mr. Boggess: That wouldn't be Exhibit "D." That would be Exhibit "C."

Q. (By Mr. McCarrey): I hand you Exhibit "D" and ask you whether or not that's [31] the first will you prepared?

A. Yeah, that's the first will.

Q. And you state that that was taken to Mr. Colbert rather late at night?

A. Yes, that was made late at night. We dated it the 22nd because it was so close to around midnight that we—anyway, it didn't make a great deal of difference.

Q. Do you recall who was present at that time?

A. Mr. Benz and Mr. Kobbell and myself and Mr. Colbert and I think off and on possibly once or twice there was a nurse came in.

Q. There is some interlineations on that will. I

Appellant's Exhibit A-1—(Continued)
(Testimony of Warren A. Taylor.)

would like to ask you when they were placed there and who placed them?

A. That was placed on there the next day and I understand later that that was written by a nurse or somebody else and initialed by Mr. Colbert when the will—— (Interrupted.)

Q. That was the first will—— (Interrupted.)

A. That's the first will, yeah.

Mr. McCarrey: May I see Exhibit "C"?

Q. (By Mr. McCarrey): And now I hand you the file of Petitioner's Exhibit "C" and therein you—what purports to be the last will and testament of Mr. Louis D. Colbert and I will ask you who prepared that will if you know?

A. I did. I dictated that subsequently. [32]

Q. And at whose request?

A. At the request of Mr. Colbert.

Q. And was that will prepared pursuant to the direction of the testator, Mr. Colbert?

A. Yeah, but—pursuant to the directions given to me early in the afternoon of October 22nd.

Q. I will ask you if you know when that was signed?

A. That was on the afternoon of October 22, 1946.

Q. And who was present at the time of the signing?

A. Mr. Benz who just testified, Mr. Kobbell, Mr. Haynes and I believe at that time, Thelma Hayes was there.

Appellant's Exhibit A-1—(Continued)

(Testimony of Warren A. Taylor.)

Mr. Hurley: What?

Witness: I believe Thelma Hayes was there.

Q. (By Mr. McCarrey): Now, I will ask you if you know whether or not Mr. Colbert signed that will as his own free act and deed? A. He did.

Q. In whose presence did he sign that?

A. He signed it in the presence of James F. Haynes, Arthur Benz, V. A. Kobbell, myself, and if Mrs. Hayes was there, in her presence also.

Q. And I will ask you if you know when the subscribed witnesses affixed their signatures thereto?

A. Immediately after Mr. Colbert had signed.

Q. At whose request? [33]

A. At Mr. Colbert's request.

Q. Was there any discussion pertaining to the will?

A. Well, Mr. Colbert looked—read it over and said that was the way he wanted it and made some remark he thought that would be the last.

Q. Could you tell the court the difference between this will and this other will?

A. Well, the first will——

Mr. Hurley: We object. The wills show for themselves.

Mr. McCarrey: Very well.

Q. (By Mr. McCarrey): Did you ever have occasion to see Mr. Colbert after that?

A. Yes, I did.

Q. When and where, do you recall?

A. At the—well, I visited him at the hospital

Appellant's Exhibit A-1—(Continued)
(Testimony of Warren A. Taylor.)

several times after that and quite a number of times at the Graehl Circle Bar.

Q. Did you have occasion to talk to him when you visited him?

A. Practically every time that I went out there.

Q. Do you have an opinion as to his competency at the time he made the will and for some time thereafter?

A. Oh, yeah. He was—his mind was very good at the time he discussed the will and signed them both and Mrs. Hayes [34] was running the Graehl Circle Bar and I used to go out there quite often for dinner. They serve very fine dinners there and sometimes I would talk with Lou down in the dining room and other times I'd went upstairs and seen if he was—how he was.

Q. Did you notice anything peculiar or different about Mr. Colbert when you visited him at the Circle Graehl Bar?

A. No. He was the same as the average person. He was weak for a while. He was physically weak from his—the sickness.

Q. But his mind—

A. Mentally he was very alert.

Mr. McCarrey: Your honor, we have been in session about an hour. May we have a 10 minute recess?

Mr. Hurley: Just a minute. About how many more witnesses do you have? I have a witness I have to—the reason I ask—

Appellant's Exhibit A-1—(Continued)

(Testimony of Warren A. Taylor.)

Mr. McCarrey: I would guess we have about 6 or 7 more. I don't think we will get finished this morning.

Mr. Hurley: Then I have no objection to the recess.

The Court: Recess for 10 minutes.

(Whereupon, a recess of 10 minutes was had.)

(Mr. Warren A. Taylor returned to the stand under direct examination by Mr. [35] McCarrey.)

Q. Mr. Taylor—

Mr. Taylor: Pardon me. I'll get the old cheaters here. (Mr. Taylor left the stand and returned with his glasses.)

Q. Now, I will ask you if you know whether or not Mr. Colbert was taken care of over at the Graehl Bar after he left the hospital? A. Yes, I do.

Q. How was he taken care of if you know?

A. Well, he was given a room and he was fed by Thelma for a number of months there.

Q. How do you know that?

A. I think he was very well taken care of. Oh, I've been over there and eaten down there in the dining room and I have been upstairs where he was stopping in the apartment upstairs.

Q. Now calling your attention to the last will and testament which you have before you, I will

Appellant's Exhibit A-1—(Continued)
(Testimony of Warren A. Taylor.)

ask you if you know where Mr. James F. Haynes is at the present time?

A. Mr. Haynes is I think he is in Valdez at the present time and will not be back until the 26th. I made inquiries to have him here but he was on a trip until that time.

Q. Do you know where Mr. V. A. Kobbell is?

A. I made inquiry to have him present here today. I believe he has left the country. He is not around. [36]

Q. He's not in Fairbanks?

A. Not in Fairbanks.

Q. Mr. Taylor, did you have any occasion to visit Mr. Colbert at the Circle Graehl Bar with an old friend of Mr. Colbert's? A. Yes, I did.

Q. Will you please tell the court the approximate time and the circumstances surrounding that?

A. It was after he had got out of the hospital and Mr. Allman who was from the time he was a small boy was raised in Fairbanks and was an old friend of Lou's. I think they did mining in the same area. Well, Mr. Allman went over with me one night to see Lou. I might say in that respect that Mr. Allman had left here in 1917 to go into the Army and served several years, couple of years overseas and then he was in the newspaper business over there and did not come back to Fairbanks until around 1946.

A. And was there anything that happened at that time that recalls to your recollection?

Appellant's Exhibit A-1—(Continued)

(Testimony of Warren A. Taylor.)

A. Well Jack and I were going to have dinner. I think my wife and Miss Lee went along and Jack expressed a desire to see Lou and went up. Lou recognized him. They had a great talk about the old days here although at the time it was quite remarkable of his memory of faces, a period of 1917 to 1946 and they talked about the old times on the trail and [37] mutual friends that they have had for many years and Jack went back afterwards to see him but not in my presence.

Q. I will ask you if you know how long it had been since Mr. Colbert had seen Jack Allman?

A. It had been since the summer of 1917 until the fall of 1946, in the winter of 1946.

Q. And did you have to introduce Mr. Allman to Mr. Colbert?

A. I did not. Mr. Colbert recognized him.

Mr. McCarrey: I would like to have this marked for identification.

The Court: Petitioner's identification number five.

(Power of attorney signed by Mr. L. D. Colbert was received and marked Petitioner's Exhibit 5 for identification.)

Q. (By Mr. McCarrey): I hand you this instrument and ask if you know what that is?

A. Yes, I do.

Q. What is it?

Appellant's Exhibit A-1—(Continued)
(Testimony of Warren A. Taylor.)

A. That is a power of attorney executed by Mr. Colbert.

Q. At whose request was that drawn up?

A. By Mr.—at Mr. Colbert's request.

Q. And who prepared the instrument?

A. I did. [38]

Q. Did Mr. Colbert sign that in your presence?

A. He did.

Mr. McCarrey: We offer it in evidence.

Mr. Hurley: Could I see it please?

(Mr. McCarrey showed the document to Mr. Hurley.)

Mr. McCarrey: I would like to offer it in evidence, your Honor.

The Court: Marked as Petitioner's Exhibit "E."

(The power of attorney previously received and marked Petitioner's Exhibit 5 for identification was received in evidence and marked Petitioner's Exhibit "E.")

Q. (By Mr. McCarrey): I will ask you if you know, Mr. Taylor, what purpose that was prepared for?

A. To empower Thelma Gregor Hayes to look after his property during his illness.

Q. Where was Mr. Colbert at that time?

A. I believe he was in the hospital at the time.

Q. Was Mr. Colbert able to get out and around at that time?

Appellant's Exhibit A-1—(Continued)

(Testimony of Warren A. Taylor.)

A. No, he wasn't able to get out.

Mr. McCarrey: May I approach the witness, your Honor?

The Court: Yes.

Mr. Hurley: You say there was a nurse that phoned you on the 22nd of October, Mr. [39] Taylor?

Mr. McCarrey: Just a moment. I want to approach the witness and the court has granted me permission. Just a moment please.

(Mr. McCarrey approached the witness.)

Q. (By Mr. McCarrey): Was there any other reason why Mr. Colbert wanted to have this power of attorney given to Mrs. Gregor?

A. Well——(Interrupted)

Q. Or Hayes, Mrs. Hayes?

A. At the time that he asked me to draw up this power of attorney, he said that Thelma had helped him with his affairs for quite a few years and he wanted her to have the authority to handle his affairs while he was ill.

Mr. McCarrey: That's all. Just a moment, please—that's all.

Cross-Examination

By Mr. Hurley:

Q. You say it was a nurse who called you on the 22nd day of October because Mr. Colbert wanted to see you?

Appellant's Exhibit A-1—(Continued)
(Testimony of Warren A. Taylor.)

A. I don't say it was a nurse. It was some female voice that had called from the hospital.

Q. You don't know who it was?

A. And said Mr. Colbert would like to have me come over. No, I don't know. I didn't inquire.

Q. You never found out who called you? [40]

A. No, I didn't know.

Q. And you say along about midnight that Mr. Benz and Mr. Kobbell also were there at the hospital?

A. Yes, it was late in the evening.

Q. How did they happen to be there, do you know?

A. Mr. Kobbell had to go—I think I went over in the cab with Mr. Kobbell and I think arrangements were made for Mr. Haynes to go along as a witness to this will.

Q. Who made the arrangement for him to go?

A. I believe Mrs. Hayes did. I think she knew about this will.

Q. Was there any nurses on duty there at that time?

A. I think there was. Nurse came in once while we were there.

Q. There were nurses there on duty at that time?

A. Yes.

Q. And on the afternoon, you say the last will was executed in the afternoon?

A. Yeah.

Q. About what time of the day was that?

Appellant's Exhibit A-1—(Continued)

(Testimony of Warren A. Taylor.)

A. Oh, it would be pretty hard to remember, Mr. Hurley. It was long after the middle of the afternoon. I am unable to set the time. Close to five o'clock.

Q. Was it before or after dinner?

A. What? [41]

Q. It was before they had their dinner over there? A. Yeah.

Q. And there were nurses on duty there at that time, were there?

A. I presume they were.

Q. And how did these 3 men, Mr. Haynes and Mr. Benz and Mr. Kobbell, how did they happen to be there at that time?

A. I think they requested——

Q. What?

A. I believe they were requested to go over there.

Q. By who? A. I don't know.

Mr. Hurley: That's all.

Mr. McCarrey: That's all.

(The witness left the stand.)

Mr. McCarrey: I will call Mr. Muldoon.

The Court: Step forward and be sworn.

Appellant's Exhibit A-1—(Continued)

ALBERT C. MULDOON

408-6th Avenue, Fairbanks, Alaska, called as a witness in behalf of the Petitioner, being first duly sworn, testified as follows:

Direct Examination

By Mr. McCarrey:

Q. Will you state your name please?

A. Muldoon, Albert C. [42]

Q. Where do you reside, Mr. Muldoon?

A. 408-6th Street.

Q. Fairbanks, Alaska? A. That's right.

Q. How long have you resided in the Territory of Alaska? A. Twelve years.

Q. Did you ever know a gentleman by the name of Mr. Louis D. Colbert, more commonly known as Lou Colbert? A. Yeah.

Q. When did you first meet Mr. Colbert?

A. I met him in 1946, along in July or August.

Q. Whereabouts did you meet him?

A. I was building a couple of houses out at 13th and Gillam. He used to walk by there every day or so.

Q. Will you tell the court the circumstances around which you had the opportunity to meet Mr. Colbert?

A. Well, he used to stop and ask me about the property and how much it was worth and how much I was spending.

Appellant's Exhibit A-1—(Continued)

(Testimony of Albert C. Muldoon.)

Q. You say he came by frequently?

A. Yes, he came by there several times in the course of a month or two.

Q. When was the last time, do you recall, ever having a conversation with Mr. Colbert?

A. The last time I saw him was in the winter of 1947.

Q. And whereabouts did you see him? [43]

A. In the Post Office here.

Q. Was anybody else present at that time?

A. Well, there was lots of people there, but nobody while I was talking to him. Nobody came up that I remember.

Q. So, you had occasion during the summer of 1946, fall of 1946 and early winter of 1947 to talk to Mr. Colbert on several occasions, is that correct?

A. That's right.

Q. Do you have an opinion as to his mental competency?

A. Well, I thought the man was pretty clever.

Q. Why? What makes you say that, Mr. Muldoon?

A. Well, he told me that he had an interest in Graehl and talked about trading his interest in Graehl for one of the houses I was building at 13th and Gillam.

Q. Did he say why he wanted to trade his interest out at Graehl?

A. No. He asked how I would like to have an interest in a night club. He didn't say why.

Appellant's Exhibit A-1—(Continued)
(Testimony of Albert C. Muldoon.)

Q. Did that ever materialize? Did you ever make the trade?

A. No, I couldn't do business with him.

Q. Now, you are a businessman, are you not?

A. That's right.

Q. And you have occasion in the course of your business to talk to lots of people, haven't you?

A. What? Yes. [44]

Q. Would you say that Mr. Colbert, during the summer, fall and early winter of 1946 was a man of ordinary business prudence?

A. I would say he was mighty clever; the deal he tried to make with me.

Q. You felt then that he was business wise?

A. That's right.

Q. And did he display any indication of being mentally unbalanced?

A. Oh, no. Of course, I don't know much about insanity, but I think the man was very very smart and very clever for the deal he tried to put over.

Mr. McCarrey: That's all.

Cross-Examination

By Mr. Hurley:

Q. When was it, Mr. Muldoon, that you talked to him, in 1946?

A. When I was building those houses. I looked the date—I had the date registered on June the 26th after I bought the place from Cotton and then

Appellant's Exhibit A-1—(Continued)

(Testimony of Albert C. Muldoon.)

in about a week I started building that house, rebuilding it and building the other one alongside of it and then I imagine it was about 3 months, Lou used to stop there in the afternoon and talk.

Q. That was when he was living in his house?

A. I don't know, Mr. Hurley, where he was living, but I know [45] he used to come by.

Q. He used to pass there?

A. He used to pass there.

Q. Going to town and coming back?

A. Yes, always walking.

Q. And he was able to get around all right at that time, was he?

A. Oh, yes; he walked there and walked away.

Q. Was it then that you talked to him about the nightclub or afterwards?

A. Well, the date when I was building there.

Q. That's when you talked to him and he told you that he had an interest in the Graehl Circle Bar?

A. That's right.

Q. Did he tell you what that interest was?

A. No, he didn't. That's where I thought he was so clever. He wouldn't tell me until I agreed to make the trade with him.

Q. And what was the nature of the trade he wanted to make?

A. Well, he said he had an interest in Graehl, that it was a substantial sum and he asked me what I was spending out there.

Appellant's Exhibit A-1—(Continued)
(Testimony of Albert C. Muldoon.)

Q. Yes.

A. And I told him that I figured that it would cost \$25,000 and he told me that—he never told me the amount but he [46] told me it was a substantial amount.

Q. What kind of a trade did he offer to make that you thought was so—that he was quite capable?

A. Well, he wanted one of the houses. He wanted the big house.

Q. For the Graehl Circle Bar?

A. For his interest in the Graehl Circle Bar.

Q. But you never found out whether he had an interest or not? A. No, I didn't.

Q. No, you didn't?

A. Only what he told me.

Q. And you didn't inquire further to find out what kind of a trade you could make with him?

A. Well, that's when I looked him up. I think it was winter time and I used to come looking for him and I met him in the Post Office here. I got that Smith, who used to be Commissioner in the house in there and I wasn't getting enough money from the houses to pay the taxes on the property so I wanted to get rid of the house. That's when I looked him up and I met him here. I used to go on the street looking for him.

Q. What time in 1947 that you saw him at the Post Office?

A. What time of the day?

Appellant's Exhibit A-1—(Continued)

(Testimony of Albert C. Muldoon.)

Q. What time in 1947? [47]

A. It was in the early winter time.

Q. In 1947? A. In 1947, yes.

Q. Had you known about his sickness and his being in the hospital?

A. No, I didn't know about that.

Q. You didn't know about that?

A. Nothing.

Q. And what was the conversation you had with him in the Post Office?

A. Well, I asked if he was still ready to trade. He said yes, he would trade and then I asked him what interest he had over there. "Oh," he said, "I have got quite an interest," and then I couldn't do anything with him and sent Skinner after him. That was my partner and Skinner met him the next day.

Q. Well, were you with him?

A. No, I wasn't with him.

Mr. Hurley: Well, I don't care to hear about that. That's all.

Redirect Examination

By Mr. McCarrey:

Q. One more question please, Mr. Muldoon. I believe you testified under cross-examination that you looked up the date and found out it was some time in June when you bought the [48] property?

A. No, you misunderstood me. When I bought

Appellant's Exhibit A-1—(Continued)
(Testimony of Albert C. Muldoon.)

that property out there from a man named Cotton, I bought it through Betty Janes and she had the date recorded for me on the 26th of June and then after that I started rebuilding the house out there.

Q. That's what I understood it to be.

A. It took about 3 months. Lou used to walk by every day.

Q. That would be June—that would be on the 23rd of June?

A. I think it was the 26th. I'm not sure.

Q. 26th of June? So you didn't start building until sometime after the 4th of July?

A. That's right. I think we started right after the 4th.

Q. And you say you were building there for about 3 months?

A. That's right.

Q. That would be all of July, August and all of September?

A. Approximately.

Q. And it was during this course of time that you talked to Mr. Colbert on frequent occasions?

A. That's right, that's right. I used to be out there every day when doing the work and old fellows would stop by there.

Q. And during this period of time, he appeared to have a lot of business acumen?

A. He appeared to be very clever.

Q. Mr. Muldoon, did you notice any change between the time [49] you first met Mr. Colbert in June, July and August and then again when you saw him in the early winter of 1947?

A. No.

Appellant's Exhibit A-1—(Continued)

Mr. McCarrey: That's all.

(The witness left the stand.)

Mr. McCarrey: I would like to call Mr. John Cetkovich.

Mr. Hurley: How do you spell that name?

Mr. McCarrey: C-e-t-k-o-v-i-c-h.

MR. JOHN CETKOVICH

called at a witness in behalf of the Petitioner, being first duly sworn, testified as follows:

Direct Examination

By Mr. McCarrey:

Q. Your name is John Cetkovich, spelled C-e-t-k-o-v-i-c-h? A. Yes, sir.

Q. And where do you reside, Mr. Cetkovich?

A. I stay over to the High Spot Cafe.

Q. And how long have you resided in the Territory of Alaska? A. Oh, about 25 years.

Q. You're a cook by trade, aren't you?

A. Yes, sir.

Q. Now, Mr. Cetkovich, did you ever have occasion to meet [50] Mr. Lou Colbert?

A. Yes, I are.

Q. When did you first meet him?

A. I met him over to Thelma's place over there.

Q. And do you remember what year that was?

A. No, I can't tell you for sure. I have records of it.

Appellant's Exhibit A-1—(Continued)
(Testimony of Mr. John Cetkovich.)

Q. Do you remember it was in the year 1946?

A. Somewhere around there.

Q. Could it have been in 1947?

A. Around there somewhere. I can't tell you for sure. I was trying to look some records, but I throwed them away.

Q. Were you working over there, Mr. Cetkovich? A. Yes, I was.

Q. What was your job? A. I was cook.

Q. And did you ever have occasion to see Mr. Colbert there for dinner? A. Every day.

Q. Every day? A. Yes, sir.

Q. Where did Mr. Colbert live at that time?

A. He live right at the club there.

Q. Did he have a bunk or did he have a room?

A. No, he had a room upstairs.

Q. Did you have occasion to go up to his [51] room? A. Yes, I did.

Q. For what purpose?

A. I took food to him, books and papers.

Q. Did you have a conversation with him?

A. I talked mining and various things.

Q. Did you do this on more than one occasion?

A. Several occasions. Each night he used to talk and I used to go for newspapers.

Q. How long did you work over at Circle Bar?

A. I should say I worked there around four months.

Q. And you don't remember what time of the year that was? A. No, I don't.

Appellant's Exhibit A-1—(Continued)

(Testimony of Mr. John Cetkovich.)

Q. Was it in the fall of the year or the winter?

A. I come there I think in February if I'm not mistaken and I stayed there until about first of June.

Q. About the first of June?

A. First of June, around there, 10th or 15th.

Q. Did Mr. Colbert go to the hospital while you were working over there?

A. They took him to the hospital from there. He died in the hospital.

Q. Do you know who took him to the hospital?

A. An ambulance come out to him. I don't know who it was.

Q. I will ask you if you know what the condition of the room where he stayed? Was it clean or dirty? [52]

A. Absolutely was in good shape.

Q. And who kept that——

A. Well, Thelma kept it.

Q. Do you know who paid for it?

A. I don't. No.

Q. Did Mr. Colbert always have plenty to eat?

A. Absolutely, yeah.

Q. Do you have an opinion as to the state of his mind at the time he was over there?

A. Yes, I do.

Q. What is that opinion, Mr. Cetkovich?

A. I think he was a very smart man.

Q. Why do you say that?

Appellant's Exhibit A-1—(Continued)
(Testimony of Mr. John Cetkovich.)

A. Because he talked sensible all the time. He was very well educated man.

Q. Did he ever do anything that was peculiar?

A. No, sir; at no time, at no place.

Q. Did he ever try to set the house on fire?

A. No, sir.

Q. Never did anything out of the way during——

A. No, sir; he was a gentleman in all walks of life.

Q. Who lived there at the same time, Mr. Cetkovich, if you recall?

A. Well, Thelma and there was a maid and a couple of bartenders. I can't recall their names. There was quite a [53] few people living around there, janitors. I can tell you for sure. I can't recollect right now, but I——

Q. Was Thelma's mother living there, Mrs. Gregor?

A. No.

Q. She wasn't living there at the time?

A. No, she wasn't.

Q. Did Mrs. Gregor come around there?

A. Yes, she come around there once in a while.

Q. Did she ever talk to Mr. Colbert?

A. Naturally, she says, "Hello, Lou," that's all.

Q. They were friendly?

A. Friendly, absolutely they were, yeah.

Q. Did Mr. Colbert have any enemies that you knew of?

A. None that I know of.

Appellant's Exhibit A-1—(Continued)

(Testimony of Mr. John Cetkovich.)

Q. As a matter of fact he got along with people very well?

A. Oh—excuse me. He was a very fine man. He was a very fine gentleman. Everybody liked him around there and everybody helped him out.

Q. Do you know whether or not he had any money?

A. No, I don't. I can't tell you that.

Mr. McCarrey: That's all. May be cross-examined, Mr. Hurley.

Cross-Examination

By Mr. Hurley:

Q. You say—what was his condition just before they took [54] him to the hospital?

A. Well, he was crippled naturally. He couldn't get around. We used——

Q. Was there anything else wrong with him?

A. No, not that I know, Mr. Hurley. His mind, I don't think was anything wrong with the man.

Q. Do you know anything about his powers, that he couldn't hold himself?

A. Well, his foot was on the bum.

Q. What? A. His legs was on the bum.

Q. How about his digestive apparatus? Did you know anything about that? A. No.

Q. Did you know anything about his control of his water?

A. He's never complained to me about anything like that.

Appellant's Exhibit A-1—(Continued)
(Testimony of Mr. John Cetkovich.)

Q. You never knew anything about that conditions—those conditions at all?

A. No, but I know that Thelma used to go and take care of him.

Q. You didn't know anything about that?

A. But he was sick half the time there and he didn't want to go to the hospital. He told me that himself.

Mr. Hurley: That's all.

Redirect Examination

By Mr. McCarrey:

Q. Do you know why he didn't want to go to the hospital? [55]

A. No. I'll tell you sincerely before this court he said, "I would rather die here in this place than go over there and die." That's the very words he spoke to me.

Q. Did Mrs. Gregor ever have—Mrs. Hayes ever have a doctor for him at the house?

A. Yes, she called a doctor for him. She wanted him to go to the hospital just a couple of days before they took him and he refused to go.

Mr. McCarrey: That's all.

Recross-Examination

By Mr. Hurley:

Q. Who was the doctor, John?

A. Well, I couldn't tell you that, Mr. Hurley.

Appellant's Exhibit A-1—(Continued)

(Testimony of Mr. John Cetkovich.)

I couldn't tell you for sure, but I know he was a——

Q. You don't know who the doctor was?

A. No, I didn't look at the——

Q. You didn't see the—did you see the doctor?

A. No, I didn't, but he was there.

Q. How do you know?

A. Because they took him out to the hospital that same night.

Q. You didn't see the doctor. How do you know the doctor was there?

A. Yes, but he was there. The ambulance come after the man. [56]

Q. Was it Doctor Schaible?

A. I think so. I don't know for sure.

Q. Was he under any doctor's care prior to the time they took him to the hospital that you know of?

A. I don't know. I couldn't tell you that for sure.

Q. You don't know about that?

A. No, I can't tell you for sure.

Mr. Hurley: That's all.

Mr. McCarrey: That's all. Thanks very much.

Witness: Your Honor, do I have to come back?

Mr. McCarrey: Excuse him, your Honor.

The Court: You're excused.

Witness: Thank you very much gentlemen.

(The witness left the stand.)

Appellant's Exhibit A-1—(Continued)

Mr. McCarrey: Call Mrs. Gregor.

The Court: What's that name again?

Mr. McCarrey: Gregor. G-r-e-g-o-r.

CECELIA H. GREGOR

called as a witness in behalf of the Petitioner, being first duly sworn, testified as follows:

Direct Examination

By Mr. McCarrey:

Q. Will you state your name please? Will you state your name please? [57]

A. Cecilia H. Gregor.

Q. And are you the mother of Thelma Gregor Hayes? A. I am.

Q. Where do you live, Mrs. Gregor, at the present time?

A. In Anchorage, at the present time.

Q. Did you ever live in Fairbanks, Alaska?

A. For a period of about 12 years.

Q. When did you first come to Fairbanks?

A. Christmas night in 1938.

Q. 1938? A. That's right.

Q. Now, Mrs. Gregor, did you ever know a gentleman by the name of Louis D. Colbert, more commonly known as Lou Colbert? A. I did.

Q. And when did you first meet Mr. Colbert?

A. In 1940, in about January, 1940. I was working for Dick Woods.

Q. How did you happen to meet Mr. Colbert, Mrs. Gregor?

Appellant's Exhibit A-1—(Continued)

(Testimony of Cecilia H. Gregor.)

A. I was working for Richard Woods and I cooked and served the dinner there. Lou was invited to the dinner. It was a business discussion between him and Mr. Woods and Robert Sheldon who was then Postmaster. He was also there.

Q. Did you ever have occasion to see Mr. Colbert after that time? A. Very many times.

Q. Will you tell the court in detail about your acquaintanceship with Mr. Colbert? [58]

A. Well, I met him many times at Thelma's dinners and then he was at my house. He used to come to my house for dinner with my husband and myself.

Q. For what purpose did he come to your house, Mrs. Gregor? A. Just as friends.

Q. As a matter of fact, he was very friendly toward Mr. Gregor, was he not?

A. Absolutely, yes. They were very good friends.

Q. Now, how often did he come to visit you, Mrs. Gregor?

A. Well, after he—he used to walk clear from his place up here near Gillam Way and he used to go up there and visit us there all through the—from about 1943 all up until just before he went to the hospital. He used to walk up to our place.

Q. And how frequently would he do that?

A. Well, after he moved to Graehl, after he went there to live, two or three times a week.

Q. Would he stay long periods of time?

A. Yes, he would visit and stay all afternoon

Appellant's Exhibit A-1—(Continued)
(Testimony of Cecilia H. Gregor.)

sometimes, late after dinner and we would take him home.

Q. Did Mr. Colbert have any money that you know of?

A. I believe he had, but how much I couldn't say.

Q. How—what leads you to believe he had some money, Mrs. Gregor?

A. Well, he had property and Lou seemed to have plenty for [59] whatever he wanted to do.

Q. Did Mr. Colbert ever loan any money?

A. I think he loaned money to Thelma. I don't know and to other people too, but not to us.

Q. But you do know he loaned money to other people, too? A. Yes.

Q. On more than one occasion?

A. Oh, yes. I am quite sure of that.

Q. Now, calling your attention to the year 1946. Where were you at that time, if you recall?

A. Where was I?

Q. Yes.

A. I was living up home there in Graehl.

Q. Did you have occasion to see Mr. Colbert frequently during that year?

A. Yes, I would visit him in the hospital when he was in the hospital.

Q. I will ask you if you know what was his physical condition at that time?

A. In 1946, my husband passed away in January 16, 1947. Mr. Colbert was at the funeral and

Appellant's Exhibit A-1—(Continued)

(Testimony of Cecilia H. Gregor.)

visited my place after that. His physical condition was fine.

Q. Well, did he have any trouble with his legs, Mrs. Gregor?

A. Well, yes. He did complain about his [60] legs.

Q. Did he lose a lot of weight if you recall?

A. Well, no. I can't say that he lost any weight.

Q. What was the status of his mind with reference to business if you know at that time?

A. Keen.

Q. What makes you say that?

A. Because he was a business man and he was very thorough.

Q. And did you notice any change during the summer of 1946 or fall?

A. Absolutely no, not in 1946.

Q. Was there any change in 1947? A. No.

Q. Was there any change in his physical condition in 1947? Did he get better or worse?

A. Just his legs. He complained about his legs, didn't know whether it was rheumatism or what. He complained about his legs, I think.

Q. I will ask you if you know whether or not he had any occasion to go to the hospital?

A. I beg your pardon?

Q. I will ask you if you know whether or not Mr. Colbert had occasion to go to the hospital in Fairbanks? A. Well, twice, yes.

Appellant's Exhibit A-1—(Continued)
(Testimony of Cecilia H. Gregor.)

Q. Did you visit him while he was in the hospital? A. I did. [61]

Q. On more than one occasion?

A. Oh, yes.

Q. I will ask you if you know if there was any change in his mental condition at that time?

A. No.

Q. And you state that he went to your husband's funeral in January of 1947?

A. We had a very cold winter. It was 25 days before we could hold that funeral. My husband died on the 16th of January. It was on the 9th of February that we had the funeral and Mr. Colbert was at the funeral.

Q. And what was his mental condition at that time, if you know? A. Perfect.

Q. Did you talk to him that day?

A. I certainly did.

Q. And did he talk with other people?

A. Yes.

Q. And you—were you able to hear the conversation he had with other people on that day?

A. Yes.

Q. Was it an intelligent or sane conversation?

A. Yes.

Q. Did it make sense? A. Certainly. [62]

Q. I will ask you if you know—strike that. I will ask you if you think Mr. Colbert was ever mentally incompetent?

A. At no time that I know of. At no time.

Appellant's Exhibit A-1—(Continued)

(Testimony of Cecilia H. Gregor.)

Q. And you are very well acquainted with him?

A. Very well acquainted.

Q. Do you recall when Mr. Colbert went to live with your daughter, Mrs. Hayes, or about?

A. I couldn't say exactly, but I believe that he went to live with her after he came out of the hospital the second—the first time.

Q. Did you have occasion to go to his room, at his place at Graehl? A. Oh, yes.

Q. How was he taken care of?

A. He was taken good care of.

Q. How do you know?

A. I was there and saw it.

Q. Was the room clean? A. Yes.

Q. And did he have something to eat?

A. Plenty, everything he wanted.

Q. Who paid for it?

A. I couldn't say. I suppose he did.

Mr. McCarrey: That's all. [63]

Cross-Examination

By Mr. Hurley:

Q. Did you know about his loaning money to Thelma? A. Yes.

Q. And did you ever know of her paying any of it back? A. Yes.

Q. What? A. Yes.

Q. Did she ever pay any back? A. Yes.

Q. When?

Appellant's Exhibit A-1—(Continued)
(Testimony of Cecilia H. Gregor.)

A. Well, whenever they could come to—when-
ever she was supposed to pay, I believe.

Q. What?

A. When she was supposed to pay it, I believe.
I don't know about that.

Mr. Hurley: That's all.

Redirect Examination

By Mr. McCarrey:

Q. Mrs. Gregor, did Mrs. Hayes ever assist Mr.
Colbert with his business? A. Yes.

Q. In what respect?

A. Well, I believe she kept books for him and
took care of—seen people for him at times. [64]

Q. How long a period of time did she do that if
you recall?

A. Since when he came from the hospital the
first time.

Q. Did she ever do it before?

A. I couldn't say for sure. I don't know.

Q. Did Mr. Colbert loan money more than one
time to Mrs. Hayes, your daughter? A. Yes.

Q. On several occasions? A. Yes.

Q. Do you remember about the first time he ever
loaned money to her?

A. I could not say definitely for sure.

Q. You stated on cross-examination that Mrs.
Hayes paid back Mr. Colbert. Did you ever see her
at any time pay money back to Mr. Gilbert?

Appellant's Exhibit A-1—(Continued)

(Testimony of Cecilia H. Gregor.)

A. No.

Q. How do you know she paid it back then?

A. I saw receipts.

Q. Where did you see those receipts?

A. Up there at Graehl Bar. I saw the receipts there at Graehl Bar and since.

Mr. McCarrey: That's all.

Recross-Examination

By Mr. Hurley:

Q. You saw the receipts when? [65]

A. I saw them up there at Graehl Bar before Mr. Colbert passed away and then I saw them since.

Mr. Hurley: That's all.

Mr. McCarrey: One more question, your Honor.

Q. (By Mr. McCarrey): Did Mrs. Hayes ever send money to you to pay to Mr. Colbert?

A. Yes, she did when she was in Nome.

Q. On more than one occasion? A. Yes.

Q. Do you remember any sums of money at any one time?

A. Well, it was—she wired it and I took it out to his place. He wanted it in lump sums.

Q. If you recall. It isn't too important.

A. Well, it was—one of them she sent \$300, another time two hundred, and another time \$150 that I remember.

Q. Wasn't there a strong feeling of friendship

Appellant's Exhibit A-1—(Continued)
(Testimony of Cecilia H. Gregor.)

between Mr. Colbert and Mrs. Hayes over a long period of time?

A. Yes, he was just like a father to her.

Q. As a matter of fact, didn't she discuss with him whenever she wanted to go in business or before she went in business? A. That's right.

Q. To get his advice on things?

A. Yes. [66]

Q. And it was more than an acquaintanceship, it was a friendship? A. A friendship.

Mr. McCarrey: That's all.

Recross-Examination

By Mr. Hurley:

Q. When were these sums, these \$300, \$200 and \$150 paid? Was that in the summer of 1946 or was it in 1945?

A. I can't believe that was in 1945 and 1946. I can't remember just exactly when she was in Nome.

Q. What? A. When she was up in Nome.

Q. That was before quite a long time before he went to the hospital? A. Oh, yes.

Mr. Hurley: That's all.

Mr. McCarrey: That's all.

(The witness left the stand.)

Mr. McCarrey: Your Honor, it is 12 o'clock. Could we take a recess until 1:30 instead of 2?

Appellant's Exhibit A-1—(Continued)

I think it will take most of the afternoon and Mr. Court Reporter, Mr. Belida has a case at 2 o'clock so we would like to expedite as much as possible.

Mr. Hurley: I think we can finish by five o'clock if we start at quarter past two. I don't think it [67] will take a great deal of time for our witness.

Mr. McCarrey: Well, I have reason to believe to the contrary, Mr. Hurley. I hope I am wrong.

Mr. Hurley: How many more witnesses do you have?

Mr. McCarrey: I have——(Interrupted)

Mr. Hurley: The bank witnesses will be short won't they?

Mr. McCarrey (Continuing): About three or four more.

Mr. Hurley: That's including the bank witness?

Mr. McCarrey: Yes, that's correct.

Mr. Hurley: They will be short, won't they?

Mr. McCarrey: I would think so.

Mr. Hurley: Well, I don't think it will take more than the afternoon myself. I don't care. The court can consider it themselves. We will just get started when we have to get out.

Mr. McCarrey: Since I am out of town and would like to leave tomorrow for sure, while Mr. Hurley might be right, I would like to start at 1:30.

The Court: Very well, court will adjourn until 1:30 and then we will have to adjourn just before two in order to allow the District Court to——

Mr. McCarrey: Thank you.

Appellant's Exhibit A-1—(Continued)

(Court adjourned at 12 o'clock, June 16, 1950, to reconvene at 1:30 p.m.) [68]

(The court reconvened at 1:30 p.m.)

Mr. McCarrey: Your Honor, we have another witness. I would like to ask permission to put on Mrs. Hayes at this time. I'll try to withdraw as soon as the other gentlemen come in. I ask at this time for Mrs. Thelma Hayes to be sworn.

THELMA GREGOR HAYES

called as a witness in her own behalf, being first duly sworn, testified as follows:

Direct Examination

By Mr. McCarrey:

Q. Will you state your name, please?

A. Thelma Gregor Hayes.

Q. And where do you reside, Mrs. Hayes, at the present time? A. Anchorage.

Q. Did you have—ever have the occasion to meet a gentleman by the name of L. D. Colbert, more commonly known as Lou Colbert?

A. Many times.

Q. Just answer the question. Did you have occasion to meet him? A. Yes.

Q. When? A. First in 1937. [69]

Q. Whereabouts?

A. I was playing an accordion at the California Bar.

Appellant's Exhibit A-1—(Continued)

(Testimony of Thelma Gregor Hayes.)

Q. Did you have occasion to see him frequently?

A. Yes. He used to come by and listen and ask me to play a tune for him.

Q. Did Mr. Colbert ever come in the bar?

A. No, he never went in the bar, just sent messages in to ask me to play certain songs.

Q. At any rate, he didn't come in the bar?

A. He didn't drink.

Q. Did you have frequent visits with Mr. Colbert from that time up until the time he died?

A. Yes, I did.

Q. Will you tell the Court in detail what you know about Mr. Colbert from the first time you met him?

A. Well, first time I met him was when he came to listen to me play and then he used to meet me and walk and carry my accordion sometimes before I go to work 7:30 to 8. So I made a loan from him. It was in 1939, my first loan.

Mr. McCarrey: (Handing witness microphone) Pardon me, Mrs. Hayes, would you hold that three or four inches from your mouth and talk into it?

Q. Go ahead, please.

A. And then I met him frequently every week. I made many loans and paid them back during our visits from 1937 until he died. [70]

Q. Now, what was the relationship between you and Mr. Colbert? Was there anything of a personal nature about it?

A. No. We were just very good friends from the

Appellant's Exhibit A-1—(Continued)
(Testimony of Thelma Gregor Hayes.)

time—first time I met him. He advised me with business affairs. He loaned me money to first start my business and he suggested I go into business for myself.

Q. Was he sweet on you?

A. No, nothing like that. We were just good friends. He was just like a father to me.

Q. Now, you stated that he made a number of loans from time to time, is that correct?

A. That's right.

Q. Did you pay all those loans back?

A. Yes, I did.

Q. Did he do anything to protect himself in the way of loans?

A. Well, sometimes we drew up a contract, and sometimes we drew up mortgages, sometimes just borrow money and give it back to him.

Q. Now, I will ask you if you know whether or not Lou Colbert was acquainted with any other members of your family?

A. He knew my folks very well. As soon as my father came up here, they become very good friends.

Q. And did Mr. Colbert ever go and visit your father and mother? [71]

A. Regularly. They used to have him over for dinner regularly.

Q. I call your attention to the year 1946. Where were you at that time if you know?

A. At the time, Graehl Circle Bar, in Fairbanks, Alaska.

Appellant's Exhibit A-1—(Continued)

(Testimony of Thelma Gregor Hayes.)

Q. Was Mr. Colbert in Fairbanks at that time?

A. Yes, he was.

Q. What was he doing if anything?

A. At what date was that?

Q. Well, during the year 1946?

A. Well, he lived at a—first part of the year 1946 he was staying at a house in Gillam Way.

Q. And was he engaged in business?

A. Well, he used to loan lots of money to different people.

Q. Did he loan money during the year 1946?

A. Yes, he did.

Q. Do you know anyone he loaned it to?

A. Several people.

Q. Can you name one?

A. Well, Howard Sparks.

Mr. Hurley: Who?

Witness: Howard Sparks.

Q. (By Mr. McCarrey): Anybody else?

A. And—I can't recall the names right off myself. [72]

Q. Did he loan some to you?

A. Yes, he did.

Q. Now, calling your attention to the summer of 1946, I will ask you if you know where Mr. Colbert was?

A. Summer of 1946?

Q. Yes.

A. He was in—at this place on Gillam Way.

Q. I will ask you if you know anything about

Appellant's Exhibit A-1—(Continued)
(Testimony of Thelma Gregor Hayes.)

him personally as to his physical condition at that time?

A. Well, I used to go see him every week, twice a week or so. I would drive out there and he complained of having rheumatism.

Q. Whereabouts?

A. In his right arm and shoulder, hurt him terribly bad with rheumatism.

Q. Did he have any other ailments?

A. He had some rheumatism in his legs.

Q. As a matter of fact, it was a little hard for him to stand?

A. At that time it wasn't so bad. However it was in his arm it was bothering him terribly.

Q. Aside from that, what was his physical condition?

A. He was healthy aside from that. It was his complaining of his rheumatism that I used to go out and clean the house for him. He couldn't bend over too good and I used to wash the dishes for him. [73]

Q. Did you charge for those trips you made out there? A. No, we were just friends.

Q. Now, you stated, Mrs. Hayes, that he advised you about business from time to time, is that correct?

A. I talked over my business dealings with him. He used to tell me his business deals.

Q. Do you have an opinion as to his business ability?

Appellant's Exhibit A-1—(Continued)

(Testimony of Thelma Gregor Hayes.)

A. He was a wonderful business man.

Q. What makes you say that?

A. He seemed to know the answers to everything, all about everything.

Q. Well, did Mr. Colbert have any money?

A. He seemed to have.

Q. Do you know how much he had?

A. No, I don't know exactly.

Q. What made you think he had money?

A. Well, he was always able to loan every one money that needed it, that desired it and in the summer he loaned money in that same manner to Leland. There was a list of names he loaned small loans to, \$200, and \$100, \$300.

Mr. McCarrey: Your Honor, I'll move on this side here. The witness has a tendency not to speak in the micophone.

Q. You knew Mr. Colbert for a long period of time. What kind of reputation did he have around Fairbanks, Alaska? [74]

A. He had a very good reputation. He was very well known by many people here.

Q. What is his reputation as to business ability and acumen?

A. He was supposed to be very intelligent business man.

Q. Now, calling your attention to on or about the 22nd day of October, 1946. I will ask you if you know where you were at that time?

A. Well, where I lived?

Appellant's Exhibit A-1—(Continued)
(Testimony of Thelma Gregor Hayes.)

Q. Yes.

A. I was at the Graehl Circle Bar.

Q. And I will ask you if you know where Mr. Colbert was at that time?

A. He was in the hospital at that time.

Q. Do you know when he went to the hospital?

A. Well, around the first part of October, I think it was.

Q. At whose request did he go to the hospital?

A. At my request.

Q. Why did you send him to the hospital?

A. I used to go over every day and fix supper and I was—it was pretty hard to wash dishes and clean up for him and I suggested he go to the hospital and help him get better faster.

Q. What was his problem at that time physically?

A. He complained of the rheumatism, it hurt so bad and that he couldn't bend and fix the fire with his arm hurting him. [75] He had a wood stove in his house. So that's why I thought if he went and stayed in the hospital I thought he would feel better.

Q. Now, I will ask you whether or not you know that Mr. Colbert made a will before he died?

A. Yes, I do.

Q. Do you know about what time he made a will?

A. Well, I know he talked about making a will in the summer before he went to the hospital to me.

Q. Did he discuss it with you?

Appellant's Exhibit A-1—(Continued)

(Testimony of Thelma Gregor Hayes.)

A. Yes. He asked me over and over which attorney I thought we should go to and make his will out. He said he would like to make a new will out.

Q. And did he have any other discussion what he was going to do with his property with you?

A. Well, he used to talk of his mining claims.

Q. What did he say about his mining claims if you know?

A. Well, he was going—he wanted to start operating the tungsten claims and things he was waiting for reports back from the Bureau of Mines.

Q. This was in the sumemr of 1946, was it?

Mr. Hurley: What's that answer about the claims?

Witness: He was talking of operating from the tungsten claims, starting to start operation on some of them. [76]

Q. (By Mr. McCarrey): Did he talk to you, Mrs. Hayes, about his will more than one occasion?

A. Yes, many occasions.

Q. Who brought up the conversations?

A. He did.

Q. What was said if you recall?

A. He used to say, "Well, Thelma," he says, "I would like to make a will out and I would like to get your advice on which attorney I should get to make a will out" and he thought that he would like to see Collins & Clasby and he asked me if I would drive him down. He said, "I would like to see Collins & Clasby and have a will made out."

Q. Did you ever do that?

Appellant's Exhibit A-1—(Continued)
(Testimony of Thelma Gregor Hayes.)

A. So I told him whenever he felt like it well I would take him down and he shouldn't talk about dying. He said, "I may not live too long and I would like to have this will made out."

Q. Did he say that?

A. That's what he said, yes. I didn't like to hear him talk about dying and things like that. I used to think that was just a sad frame of mind for people to be in to talk about that.

Q. Was Mr. Colbert in a sad frame of mind at that time?

A. No. But I thought any time he talked about dying, it [77] was just—he used to say that he wanted to make his will and he would like me to take him down to see Clasby & Collins.

Q. Now Mrs. Hayes, did Mr. Colbert have any relatives?

A. Yes, he had a sister by the name of Emma Colbert.

Q. Anybody else?

A. And he had a brother.

Q. Anybody else?

A. That's all. Whenever he mentioned his brother he said he was very well to do and owned some woolen mills or something like that, pulp mills back east.

Q. Did he——

A. He says his sister was very old and that she was very well fixed. I used to write letters for him to his sister, for years, and come over and

Appellant's Exhibit A-1—(Continued)

(Testimony of Thelma Gregor Hayes.)

dictate letters and sign the letters and sent them to her.

Q. By the way, did you ever assist Mr. Colbert in any of his transactions of business?

A. Years back he had me come over and half the time I would copy some transactions in a book that he would make out with different people small different deals, small loans, all of his regular pay outside and he would get me to write in a book so it would be easier for him to keep a track of.

Q. I will ask you if you know whether or not Mr. Colbert kept fairly good records?

A. Well, he had set up a pretty good record. Everything [78] that he would do, he would make notes and lots of papers and records. We would copy them down in a book.

Mr. McCarrey: I want to mark this for identification (handing document to Court).

(Document handed to court was marked and received as Petitioner's Exhibit 6 for identification.)

Q. (By Mr. McCarrey): What kind of script did Mr. Colbert have? Was he a good penman or bad penman?

A. Well, he could write very plain. He would just write everything down, the dates and what they were and he asked me to copy it in the book for him.

Q. Was he neat about his work particularly?

Appellant's Exhibit A-1—(Continued)
(Testimony of Thelma Gregor Hayes.)

A. Oh, yes.

Q. Did he write in a large hand or small hand?

A. Large hand I think.

Q. Now, I ask—I hand you a piece of paper and ask if you can identify that? A. Yes.

Q. What is it if you know?

A. That's Lou Colbert's writing.

Q. How do you know that's Lou Colbert's handwriting?

A. Well, this is the way he used to write. I seen this writing.

Q. Have you ever seen that before? [79]

A. Yes.

Q. When did you see it before?

A. Well, he had these papers, everything had to be written down on paper and when I—when he asked me to copy it in the book for him.

Q. Do you know that to be Mr. Colbert's handwriting? A. Yes, it is.

Q. I will ask you if you know where that has been since Mr. Colbert's death?

A. Well, he had a little green box that he had kept all these papers in and he gave it to me.

Mr. McCarrey: I ask that be——

Q. (By Mr. McCarrey): Has that been in your possession all this time?

A. Yes, it has.

Q. And that's his writing? A. Yes.

Mr. McCarrey: I will offer it in evidence, your Honor.

Appellant's Exhibit A-1—(Continued)

(Testimony of Thelma Gregor Hayes.)

Mr. Hurley: No objection.

The Court: Be marked Petitioner's Exhibit "F."

Mr. McCarrey: Thank you.

(The document previously received for identification as Petitnoner's Exhibit 6, was received in evidence and marked Petitioner's Exhibit "F.") [80]

Q. (By Mr. McCarrey): Now you stated that he wrote most of these things down?

A. Yes.

Q. And is this characteristic of what he used to write down of his business affairs?

A. Yes. He used to write everything on one sheet, sometimes on a tablet that way and when I come over I would copy them.

Q. You notice at the top there is a name, "Kelly"? A. Yes.

Q. Do you know whether or not Mr. Colbert knew a Kelly? A. Yes, he did.

Q. Who was Mr. Kelly?

A. He was a very good friend of his.

Q. Did Mr. Colbert ever have any business dealings with Mr. Kelly?

A. I think a lot of business dealings. Mr. Kelly handled most of his affairs.

Q. Do you know where Mr. Kelly is now?

A. He's dead now.

Appellant's Exhibit A-1—(Continued)
(Testimony of Thelma Gregor Hayes.)

Mr. McCarrey: May I have Exhibit "E" please your Honor?

Q. (By Mr. McCarrey): I hand you Petitioner's Exhibit "E" and ask if you know what that is? [81]

A. Yes. That is a power of attorney made by Mr. Colbert.

Q. Do you know for what purpose that was made?

A. Well, when Lou was sick, he wanted things and needed things and not have to worry about his affairs and he wanted to make a power of attorney out so that I could do things for him.

Q. Was that ever given to you?

A. Yes, it was.

Q. Did you ever use it?

A. Well, I started to use it. I paid some of his bills and accounts according to his directions and I used it about a week. That was all.

Q. Did anybody ever refuse to acknowledge it?

A. Yes. Mr. Stroeker refused when I went to cash a check for him.

Q. Do you know why that was refused?

A. Well, Lou wanted me to cash a check and I went to cash the check and Mr. Stroeker, he wouldn't let the check go through.

Q. Did you ever speak to Mr. Stroeker about that? A. Yes.

Q. What did Mr. Stroeker say if anything?

A. He said that they were starting some suit

Appellant's Exhibit A-1—(Continued)

(Testimony of Thelma Gregor Hayes.)

to stop that. They were going to make a new power of attorney, make a new power of attorney. [82]

Q. Now, I will ask you if Mr. Colbert ever authorized you to do any other business for him in the fall of 1946?

A. Well, there was lots of things he asked me to do.

Mr. McCarrey: I will have this marked for identification please.

The Court: Petitioner's Exhibit number 7.

(Document handed to the court and marked Petitioner's Exhibit number 7 for identification.)

Q. (By Mr. McCarrey): Thank you. I hand this to you and ask if you know what that is?

A. This is an authorization for me to get some things out of his safe deposit box for him.

Q. When was that issued to you?

A. That was on October 23, 1946.

Q. And did you ask for that privilege and permission?

A. No, he asked me to go to this deposit box. He wanted to get some papers he had, some notes and papers and some things from his box he wanted to have explained to me.

Q. Do you know who prepared that?

A. No, I don't know. I just know that he gave me this paper and asked me to go to his box and get some things and the key to it.

Appellant's Exhibit A-1—(Continued)
(Testimony of Thelma Gregor Hayes.)

Q. Whose signature appears there on if you know? A. Well, Lou Colbert's. [83]

Q. Was it witnessed?

A. It is witnessed, yes.

Q. Do you know any of the witnesses?

A. Well, I know one witness, Mr. Arthur A. Benz.

Mr. McCarrey: May we have this as Petitioner's Exhibit number "G"?

(The document previously received and marked as Petitioner's Exhibit number 7 for identification, was received in evidence and marked Petitioner's Exhibit "G.")

Q. (By Mr. McCarrey): Did you ever have occasion to use that authorization, Mrs. Hayes?

A. Well yes. I went over to the place to get the—to get in the box to get the things he asked me to deliver. They wouldn't let me in. They said Mr. Stroeker had orders not to let me in the box.

Q. About what time did you go over there?

A. Well, he had given it to me in the afternoon and I went right over.

Q. Was it about that same day that you was there? A. Yes.

Mr. McCarrey: I would like to read for the record, your Honor?

The Court: What?

Mr. McCarrey: I would like to read it into the record. "Fairbank, Alaska, October 23rd, 1946. [84]"

Appellant's Exhibit A-1—(Continued)

(Testimony of Thelma Gregor Hayes.)

Fairbanks Agency Company, Fairbanks, Alaska.
Dear Sirs: This will authorize you to allow Thelma Hayes to have access to my safe deposit box in you place of business. Very truly yours L. D. Colbert.”
Witnessed by Kenneth D. Wire, W-i-r-e. Witnessed further by Arthur A. Benz.

Q. (By Mr. McCarrey): And you say that you have been refused permission to go over and get into the safe deposit box the same day that was given to you? A. Yes.

Q. And they advised you that Mr. Stroecker had stopped that, is that correct?

A. Yes, that's right.

Q. Is that on or about the 23rd day of October?

A. Yes.

Q. By the way, Mrs. Hayes, do you recall what that power of attorney authorized you to do?

A. Well, it was just to act in his behalf to help him take care of his affairs under his instructions.

Mr. McCarrey: Your Honor, I would like to have these marked for identification as one exhibit rather than to have it as several exhibits for identification if you please.

The Court: This would be Petitioner's Identification number eight. [85]

(Documents handed to the court were received and marked as Petitioner's Exhibit for identification 8.)

Mr. McCarrey: To save time, your Honor, I

Appellant's Exhibit A-1—(Continued)
(Testimony of Thelma Gregor Hayes.)

would like to put this as part of it too, if you don't mind.

(Mr. McCarrey handed the court a paper.)

The Court: I believe at this time we could possibly adjourn.

Mr. McCarrey: Very well.

The Court: We will reconvene as soon as the District Court has finished.

Mr. McCarrey: Very well.

(At 2:00 p.m. the Court adjourned and reconvened at 2:20 p.m.)

The Court: Are you ready to proceed, Mr. Taylor?

Mr. Taylor: We will have to wait just a moment for examining counsel, your Honor.

The Court: Very well.

Mr. McCarrey: I believe we have identified these exhibits?

The Court: Yes.

Mr. McCarrey: Or were in the process.

(Mrs. Thelma Gregor Hayes, previously having been sworn, resumed the stand.)

Q. (By Mr. McCarrey): Mrs. Hayes, I hand you various pieces of paper and ask [86] if you can identify them?

A. That's a bank statement of Lou Colbert.

Q. And——

A. Various checks written by him.

Appellant's Exhibit A-1—(Continued)

(Testimony of Thelma Gregor Hayes.)

Q. Where have those checks been and the statement since Mr. Colbert's death if you know?

A. Well, I had them over in this box of things he gave me.

Mr. McCarrey: Your Honor, we offer these in evidence as Petitioner's Exhibit "I."

The Court: "H."

Mr. McCarrey: "H"?

Mr. Hurley: No objection.

(Documents previously marked Petitioner's Exhibit 8 for identification were received in evidence and marked Petitioner's Exhibit "H.")

Mr. McCarrey: May I offer this in for identification while counsel is looking those over?

The Court: Identification number nine.

(Document handed to the court was marked Petitioner's Exhibit 9 for identification.)

Mr. McCarrey: Your Honor, we might fix this to it to save time right to the same one.

The Court: This is identification number 10. Petitioner's Exhibit for identification number 10.

(Document handed to the court by Mr. McCarrey was marked for identification as Petitioner's Exhibit 10.) [87]

Mr. McCarrey: We offer these in evidence your Honor for petitioner.

Appellant's Exhibit A-1—(Continued)
(Testimony of Thelma Gregor Hayes.)

The Court: Petitioner's Exhibit "H."

Q. (By Mr. McCarrey): I hand you this piece of paper and ask if you know what that is, Mrs. Hayes?

A. This is a copy of a mortgage, a real mortgage made between Lou Colbert and I in 1943.

Q. And does your signature appear thereon?

A. Yes, it is.

Mr. McCarrey: We offer that in evidence, your Honor.

Q. (By Mr. McCarrey): I hand you another for identification.

A. This is the copy of another mortgage between Lou Colbert and I.

Q. And the date please.

A. 1946, January, 1946.

Q. Does your signature appear thereon?

A. Yes.

Q. Who prepared that if you know?

A. I'm not just sure. I am not just sure.

Q. Does the attorney's name appear as witness? Could Mr. Taylor have drawn it? Gradelle Leigh?

A. It probably would be Mr. Taylor. [88]

Q. I will ask you if you know who prepared this original mortgage?

A. E. B. Collins. No, Mr. Clasby prepared it.

Q. At whose request? Your request or Mr. Colbert's request if you remember?

A. No, I don't remember. We agreed upon everything.

Appellant's Exhibit A-1—(Continued)

(Testimony of Thelma Gregor Hayes.)

Mr. McCarrey: Your Honor, we offer this in evidence then.

The Court: May be marked Petitioner's Exhibit "I."

(Document previously marked as Petitioner's Exhibit 9 for identification was received and marked Petitioner's Exhibit "I" in evidence.)

Mr. McCarrey: We offer this in evidence, your Honor, mortgage of 22nd day of January, 1946, between Thelma Gregor Hayes as mortgagor and Lou Colbert as mortgagee.

The Court: This be marked as Petitioner's Exhibit "J."

(Document previously marked Petitioner's Exhibit 10 for identification, now received in evidence and marked Petitioner's Exhibit "J.")

Q. (By Mr. McCarrey): Mrs. Hayes, I think you testified before that you made payments back to Mr. Colbert on your mortgage, is that correct?

A. Yes, that's right. [89]

Mr. McCarrey: I ask that this be marked for identification, if it please the Court.

The Court: Petitioner's identification number 11.

(Document handed the court was marked as Petitioner's Exhibit number 11 for identification.)

Appellant's Exhibit A-1—(Continued)
(Testimony of Thelma Gregor Hayes.)

Q. (By Mr. McCarrey): I hand you this piece of paper and ask you if you can identify that?

A. That was our receipt for—from me to Lou Colbert.

Q. Is it from you to Lou Colbert or from Lou Colbert to you? A. From Lou to me.

Q. Does Lou Colbert's signature appear thereon?

A. Yes, it does.

Q. Were you present at the time he made that?

A. Yes, I was.

Q. Did he do that of his own free will?

A. Yes, he did.

Q. And for what purpose?

A. Well, the payment of the mortgages, paid them off in different payments.

Mr. McCarrey: We offer that for identification your Honor, a letter dated February, 1947.

The Court: Petitioner's identification number 12. [90]

(Letter dated February, 1947, received and marked Petitioner's Exhibit 12.)

Q. (By Mr. McCarrey): I believe you testified, Mrs. Hayes, that you wrote a number of letters for Mr. Colbert, is that correct?

A. That's correct.

Q. And whom did you write these letters to?

A. To his sister, Emma Colbert.

Q. Anybody else?

A. To the Bureau of Mines.

Appellant's Exhibit A-1—(Continued)

(Testimony of Thelma Gregor Hayes.)

Q. Did you ever receive any of the letters? Did she ever reply?

A. Oh, she wrote. We exchanged letters regularly for years.

Q. Did you ever see any of the letters that she sent back to Mr. Colbert in reply to yours?

A. Yes.

Q. Are you familiar with her handwriting?

A. Yes, I am.

Q. I hand you petitioner's exhibit for identification number 12 and ask if you know what that is?

A. It is a letter from Emma Colbert to Lou Colbert.

Q. And what is the date on that please?

A. That's February 21, 1947.

Q. Did you know Emma Colbert personally?

A. Not personally, only through exchange of letters in many years.

Q. Do you know that to be the letter that you received, that is, in the same handwriting, that you received from this woman known as Emma Colbert?

A. It is in the same handwriting as Emma Colbert's.

Mr. McCarrey: We offer that in evidence, your Honor. Not to get ahead of myself, but I would like to have this in evidence, plaintiff's—or petitioner's identification number 11, a receipt of July 6, 1946.

Mr. Hurley: I object as incompetent, irrelevant and immaterial, no proper foundation laid. It don't

Appellant's Exhibit A-1—(Continued)
(Testimony of Thelma Gregor Hayes.)
show that anything was paid for that receipt, how the money was paid or anything about it.

Mr. McCarrey: Very well.

Q. (By Mr. McCarrey): Did you give Mr. Colbert any money for this receipt?

A. Yes, I did.

Q. Do you recall what you gave him, a check or dollar bills?

A. No, it was in cash.

Q. And what was the consideration that you gave it to him for?

A. A balance payment of the mortgage.

Q. What mortgage?

A. One of the mortgages, a balance of the last mortgage. [92]

Q. And when was the last mortgage executed upon your premises if you recall?

A. Well, I can't recall that right off without checking the records.

Q. But this is a receipt made in your handwriting but signed by Mr. Colbert, is that correct?

A. That's right.

Q. For a valuable consideration?

A. Yes, it is.

Q. To wit: the sum of \$1,200?

A. \$1,200 and some odd dollars.

Q. Twelve hundred and twenty-four dollars.

Mr. McCarrey: We offer it in evidence, your Honor.

The Court: Be marked Petitioner's Exhibit "K."

Appellant's Exhibit A-1—(Continued)

(Testimony of Thelma Gregor Hayes.)

(Document previously marked Petitioner's Exhibit 11 for identification received in evidence and marked Petitioner's Exhibit "K.")

Mr. McCarrey: May I read that your Honor into the record? "July 6, 1946, received from Thelma Hayes \$1,224 for payment in full with interest on Graehl Circle Bar Mortgage." "\$1,224 paid in full" written in the left hand corner and signed by L. D. Colbert. We offer this in evidence your Honor as Petitioner's Exhibit.

The Court: Petitioner's Exhibit "L." [93]

(Letter dated February 21, 1947, previously marked as Petitioner's Exhibit 12 for identification, received in evidence and marked Petitioner's Exhibit "L.")

Mr. McCarrey: If the Court please, I would like to read only a short paragraph out of this. This is a letter dated 21st day of February, 1947, addressed to "Dear Brother Louis." On the reverse side of the paper, in the last—next to the last paragraph it reads as follows: "I am grateful to Mrs. Hayes for looking after you and want her to know how much I appreciate her efforts. I am pleased to know that she helps you to remember me. Best love to you from me and yours," I can't make it out "sister." Signed, Emma.

Q. (By Mr. McCarrey): Now, calling your attention to the will executed on or about the 22nd day

Appellant's Exhibit A-1—(Continued)

(Testimony of Thelma Gregor Hayes.)

of October, 1946—may I have that exhibit please, the second will please? I show you Petitioner's Exhibit "C" and—to what purports to be the last will and testament of Louis D. Colbert. I will ask you if you know whether or not you were present at the time of that signing, Mrs. Hayes?

A. Yes, I was.

Q. Where was that signed?

A. It was signed at the hospital.

Q. Now, will you tell the court the circumstances and facts [94] surrounding the execution of this will, if you know, Mrs. Hayes?

A. Well, I visited Lou that afternoon and he said he had had a will made out to me and he had a change made in it and he wanted me to be sure and be there that evening when he signed it.

Q. Did he tell you anything about it?

A. Well, he said it would be to my best interest to be there.

Q. Were you present at the time the will was signed? A. Yes, I was.

Q. Who, if anybody, was present at the time the will was signed?

A. Well, there was James L. Haynes and Arthur A. Benz and V. A. Kobbell.

Q. How do you know they were present?

A. Well, I knew them. They were there and I was there.

Q. Will you relate to the court the circumstances

Appellant's Exhibit A-1—(Continued)

(Testimony of Thelma Gregor Hayes.)

surrounding this—surrounding your going to the hospital at the time that was signed?

A. Well—at the time it was signed?

Q. Yes.

A. Well, we all—I went over that evening at regular visiting hours. I think it was a little late. It was late in the evening. [95]

Q. And just tell what took place if you recall?

A. Well, I just went in to talk to Lou and everybody came in there and he had his papers and signed it and said he wanted to be sure it was witnessed properly and not have things go wrong like Kelly's will.

Q. What happened to Kelly's will?

A. He said he wanted—he said he went to considerable expense and trouble with it and that the money all went to the Territory or something. As a matter of fact, he kept worrying about his will being made out properly and not like Kelly's will.

Q. Do you know what happened in Kelly's will?

A. He was administrator of several estates and he said he didn't want the same mistakes made on his will.

Q. Was there anything special about this will that he referred to about, if you recall?

A. You mean——

Q. Anything special about the execution of it?

A. He wanted to be sure to have 3 signatures on it.

Q. Did he tell you why he wanted 3 signatures?

Appellant's Exhibit A-1—(Continued)
(Testimony of Thelma Gregor Hayes.)

A. He said that there was only one signature on the will. That was in some case of his that he had before.

Q. Did he discuss with you the fact that he wanted 3 witnesses on it?

A. Yes. He said that wills were—lots of court cases [96] came up over wills and he wanted to be sure his was made out properly.

Q. Who was present when you went to the hospital? A. In the daytime?

Q. No, at the time the will was signed?

A. Well, that evening, Warren Taylor was there and V. A. Kobbell and Mr. Haynes and Benz.

Q. Now, did you see Mr. Kobbell affix his signature to that will? A. Yes.

Q. Was anybody forcing him to put his signature to that will? A. No.

Q. Did anybody force any of the witnesses to put his signature to this will?

A. No, I should say not.

Q. Did they do it of their—free and voluntarily?

A. Yes. They did at Lou's request. He asked them if they would sign.

Q. Did he ask Mr. Haynes to sign that will?

A. Yes.

Q. How do you know that?

A. Well, he asked him. He says, "Come on over here Jimmy. I'd like you to sign this will for me, witness this will."

Appellant's Exhibit A-1—(Continued)

(Testimony of Thelma Gregor Hayes.)

Q. Do you remember what time of the day it was? [97] A. It was late evening.

Q. Well, would you care to set a time by late evening?

A. Well, it was after dark. It was late evening, as late around visiting, last part of visiting hours.

Q. This is in October. Was it light outside?

A. No, it was dark outside. It seemed like it was dark outside.

Q. Was there any nurses present? Were there any nurses present?

A. Well, one got Lou a glass of water I think.

Q. I will ask you if you know what the condition and state of mind he was in at that time, Mrs. Hayes?

A. He was in a very—it seemed to be very alert state of mind. He knew what he was doing.

Q. Was he depressed? A. No.

Q. What was his physical condition if you know at that time?

A. He was feeling much better and said he would be home in a couple of days.

Q. How often did you go to visit Mr. Colbert during his stay in the hospital about that time?

A. Oh, every afternoon and nearly every evening.

Q. And did you talk with him frequently?

A. Yes. He always wanted some little things, like a newspaper [98] and magazines and things like that.

Appellant's Exhibit A-1—(Continued)
(Testimony of Thelma Gregor Hayes.)

Q. Did you get those? A. Yes.

Q. Who paid for them?

A. I paid for them.

Q. Did he ever repay you back for them?

A. Well, after he got out of the hospital. I never mentioned any of those things to him.

Q. Did he ever pay you back for them?

A. Well, no.

Q. I will ask you if you know where Mr. Colbert went after he came out of the hospital?

A. He came over to my place when he came out of the hospital.

Q. At whose request?

A. His own idea. He walked home from the hospital.

Q. And what did he tell you when he got there if anything?

A. He told me he didn't like the way the nurses were, that he would never get well if he stayed over there and would be a lot better off at home.

Q. Why did he say that, if you know?

A. Well, he made claims that he dropped the end of his cigarette and burned the sheets and one of the nurses caused him to get very aggravated with her and he said that he couldn't live there and he felt lot better if he could get home. [99] He had a lot of troubles with the nurses. They bothered him a lot.

Q. Did they give him good service?

Appellant's Exhibit A-1—(Continued)

(Testimony of Thelma Gregor Hayes.)

A. No. He said they gave him very poor service. They didn't seem to care what he wanted or did.

Q. Did he make any reference as to how long he had to wait for water or food?

A. He said he would have to ring and ring and they would tell him they were very busy and he didn't seem to like the food, said they had lot better food at home. He said he wanted to come home and eat and eat what he wanted to eat, and not on a diet.

Q. Was he mentally incompetent at that time to take care of his business in your opinion?

A. I don't think he was a bit incompetent.

Q. Did you see any change between say June or July of 1946 and the time he went to the hospital?

A. Not a bit. It was my suggestion that he went to the hospital or else he wouldn't have went.

Q. Did you see any change in his mental condition between the time he came over to your place after he had been to the hospital and when you received this letter from his sister?

A. No. He was worried about the lies—about the papers they had served on him in the hospital. He was very worried about that. [100]

Q. What was his worry about that? Did he ever tell you?

A. Well, he was just furious about serving incompetent papers on him while he was sick in the hospital.

Q. Were the papers served on him before he went to the hospital? A. No.

Appellant's Exhibit A-1—(Continued)
(Testimony of Thelma Gregor Hayes.)

Q. Do you know that of a fact?

A. Yes, sir.

Q. How long were they served on him after you were given that power of attorney if you know?

A. I don't know the exact time. After, it was right after I would say around, I think, it would be about a week or two.

Q. I think the power of attorney states on it the 17th day of October and I think the papers were served on the 26th day of October, is that about right.

A. That would be about right.

Q. Now, when he went over to your place to live after he got out of the hospital, I will ask you whether or not he went way from the hospital with the consent of the hospital and the doctor, if you know?

A. I am not sure. He came home very angry and mad about something that had taken place in the hospital, the way they had acted or something. He said he just absolutely refused to stay there any longer. He wasn't sick like they were claiming he was. He was physically and mentally all right [101] and he didn't want to stay in there.

Q. How was he dressed when he came home from the hospital, if you can——

A. With his bedroom slippers on and overcoat on.

Q. Over what?

A. His night shirt I think it was.

Q. And did he say why he had that clothing on?

A. He said he had asked the nurse for his clothes

Appellant's Exhibit A-1—(Continued)

(Testimony of Thelma Gregor Hayes.)

and wanted to go home and she took his clothes out of the room and refused to let him go home, so he got up and walked home.

Q. Did he say anything about—he had a quarrel with the nurse?

A. Yes. He said he had several arguments, asked to bring him water and things. He was quite angry and he couldn't see any reason to stay.

Q. Did he say anything about having a quarrel or conversation with the sisters over there?

A. No, he never mentioned the sisters, just he had lots of arguments with the nurses.

Q. Now, after he came home, Mrs. Hayes, when I say home back to your place, is that where he came to?

A. He came to my mother's when he came out of the hospital first and then mother called me up and brought him.

Q. And where did you take him?

A. He wanted me to give him a room at the Graehl instead [102] of going to his place until he got well and said he could get well a lot quicker then.

Q. Did you give him a room? A. Yes.

Q. Will you tell the court what the furnishings were or what condition the room was in?

A. He had a very nice room, one of the nicer rooms we have. It was very well furnished. It had everything in it, a sink, and running water, a toilet and shower.

Q. And did you charge him for that?

Appellant's Exhibit A-1—(Continued)
(Testimony of Thelma Gregor Hayes.)

A. No.

Q. And did he ever pay you anything for that?

A. No, we have never gotten around to that.

Q. Did you buy anything for him at that time?

A. Yes, he used to get anything he wanted to eat, anything he wanted to order. I used to personally bring him special things that he liked better.

Q. Did you provide sheets for him?

A. Oh, yes.

Q. Did you ever have his hair cut or anything like that?

A. Oh, yes. I used to have a barber come over every week and cut his hair.

Q. Did he have to have his hair cut once a week?

A. We had it cut once a week and he also got a shave.

Q. And who was that barber?

A. I think his name was Sherry. [103]

Q. You remember what it cost you for him to come over? A. \$10.

Q. Ten dollars at a time? A. Yes.

Q. Were you able to pay that kind of money at that time?

A. Well, I—it was kind of hard, but I paid it.

Q. Did you provide meals for him all the time he was in the hospital—in your place? Correction.

A. Yes.

Q. And what was his physical condition, if you recall.

Appellant's Exhibit A-1—(Continued)

(Testimony of Thelma Gregor Hayes.)

A. He got well right away after he came home over there. He was walking around, taking walks. He would come up to mother's for dinner to her place and sit around afternoons there. He would come downstairs and visit with friends and had dinners many times and eat upstairs many times. I had it brought upstairs. Sometimes we ate in the apartment and sometimes downstairs.

Q. Did you hear Mr. John Cetkovich testify this morning that he used to take dinner up to his room?

A. Yes.

Q. Is that a fact?

A. Well, when he went first there, John would go up and he asked what he would like and he would try to prepare what he liked to eat when he came from the hospital so that he got well. [104]

Q. Do you recall whether or not Mr. Jack Allman ever came to visit Mr. Colbert?

A. Yes, he did.

Q. How do you know?

A. Well, he came several times. I remember he asked to see Lou. He came down and talked to him a number of times. They sat at a table and ate together. I think they ate together a couple of times.

Q. They act like good friend, did they?

A. Oh, yes.

Q. Do you recall Mr. Taylor testifying this morning that he took Mr. Allman over there?

A. I don't remember whether I was here or not.

Q. You don't recall that?

A. I don't recall.

Appellant's Exhibit A-1—(Continued)
(Testimony of Thelma Gregor Hayes.)

Mr. McCarry: That's all.

Cross-Examination

By Mr. Hurley:

Q. That receipt, twelve hundred and twenty some odd dollars, where were you when he gave you that?

A. When who gave who what?

Q. That receipt for \$1,200. I say, where were you when Lou Colbert gave it to you?

A. At his house.

Q. Whereabouts? [105]

A. In Gillam Way.

Q. I see. And you gave him \$1,224 in cash?

A. That's right.

Q. And what did he do with the money?

A. I didn't ask him what he did with the money.

Q. I thought you talked over all your business matters?

A. Oh, we did.

Q. Did he carry it around with him and somebody steal it or did he put it in the bank?

A. I believe he made a loan to someone else with part of it.

Q. What?

A. I think he said he made some other loans to people.

Q. Who to?

A. I don't know now. I have a record of names of people he made loans to.

Q. But you don't know what he did with it?

Appellant's Exhibit A-1—(Continued)

(Testimony of Thelma Gregor Hayes.)

A. I didn't ask him at the time I gave it to him.

Q. Did you ask him afterwards?

Mr. McCarrey: Just a moment, your Honor. I would like to have Mr. Counsel give the witness a chance to testify.

Mr. Hurley: I did.

Q. (By Mr. Hurley): Did you ask him afterwards?

A. No, I never asked him exactly what he did with the \$1,200 [106] I gave back. He would always loan small sums to people, one or two, three hundred dollars. He said, "Here Thelma, will you write these down in this book, put it in this note book" is the way he would put it. I would copy them off.

Q. Do you know what become of the book?

A. Yes.

Q. Where is it? A. I have the book.

Q. Where?

A. In Anchorage among other things of mine.

Q. What kind of a book is it?

A. Well, it's just a little brown book with empty pages in it.

Q. How big a book was it? What shape?

A. Well, I don't know the exact size of it, just a regular——

Q. Was it longer than it was wide?

A. I don't know that exactly. I say it was longer than it was wide.

Q. But you didn't bring it up here with you?

A. No. And it has a lot of personal things in it.

Appellant's Exhibit A-1—(Continued)
(Testimony of Thelma Gregor Hayes.)

Q. What became of the will after it was signed by Mr. Colbert over there in the hospital?

A. I think it was put in escrow with Mr. Taylor's office.

Q. Who took it? Did you or Mr. Taylor take it?

A. I imagine Mr. Colbert gave it to Mr. Taylor.

Q. Weren't you there? A. I was there yes.

Q. Yeah, but what became of it after it was signed?

A. Well, I think that Mr. Colbert—I'm not sure—told Mr. Taylor to put it in a safe place where he won't lose it.

Q. When did you see that will again?

A. Well, before—after Lou was dead.

Q. How long after?

A. I would say about a week after.

Q. About a week after?

A. Few days after.

Q. I see. And what was done after you saw it?

A. I guess—I think the lawyer took care of that. I didn't have anything to do with it.

Q. What lawyer? A. Mr. Taylor.

Q. I see. And how long were you here in Fairbanks after Mr. Colbert died?

A. I am not sure.

Q. About how long?

A. Well, I can't say.

Q. Where did you go from Fairbanks?

A. To Anchorage.

Q. You went to Anchorage? A. Yes. [108]

Appellant's Exhibit A-1—(Continued)

(Testimony of Thelma Gregor Hayes.)

Q. Well, do you remember when Lou Colbert died?

A. Yes.

Q. About when was that?

A. Around the 25th of May, 1947.

Q. And you have no idea when it was that you moved from here to Anchorage?

A. I am not sure. It would be around June or July, somewhere there. I am not sure. I can't say.

Q. Before he died? The same year?

A. No, no. I can't say exactly when I went to Anchorage.

Q. Was it a year after Lou died or less than a year or more?

A. It would be a year after.

Q. About a year after Lou died you left Fairbanks and went to Anchorage?

A. I think it was around there.

Q. Did you know that the bank had applied to be appointed executor under the will that he had made out?

A. They started that the first—the second check I think it was that I took to the bank to cash.

Q. I am talking about after Lou died. Did you know that the bank had filed a will to be appointed administrator or executor?

A. Yes.

Q. What? A. Yes. [109]

Q. After Lou died? A. Yes.

Q. You heard about that before you left here?

A. Yes.

Q. Now, did you present this power of attorney

Appellant's Exhibit A-1—(Continued)
(Testimony of Thelma Gregor Hayes.)

to the bank, the one that has been admitted in evidence? A. Yes.

Q. What did you present it to the bank for?

A. I showed it to Mr.—I showed it to Mr. DeWree and they asked me——

Q. Showed it to who? A. Frank DeWree.

Q. Yes. A. And to Mr. Stroecker.

Q. And after you showed it to him, did you write some checks on Lou's account?

A. I showed it to Al Visca.

Q. I say, after you showed them, did you write some checks on Lou's account and draw some money out of the bank out of his account?

A. No, no, it was before I showed it to them.

Q. Well, did they cash the checks you signed?

A. They cashed the one check. They cashed two checks I believe.

Q. How much?

A. I can't remember the amount now. [110]

Q. A hundred apiece, weren't they?

A. No, I can't remember the exact amount, what it was.

Q. Didn't you draw three checks for a hundred apiece out of Lou's account?

A. No. I can't remember the exact amount.

Q. You wouldn't say you didn't write three hundred dollar——

A. No, I didn't. I think there were two, I think.

Q. When you came back the last time, they told you that they wouldn't cash any more, is that right?

Appellant's Exhibit A-1—(Continued)

(Testimony of Thelma Gregor Hayes.)

A. No. They said they were starting a suit to represent Lou themselves.

Q. Yes and that——

Mr. McCarrey: Just a moment, please. I want the Court to instruct the attorney to permit the witness to answer and——

Q. (By Mr. Hurley): And they didn't cash any more, is that right?

Mr. McCarrey: Just a moment.

The Court: Mr. Hurley, permit the witness to answer the question.

Witness: I didn't try to cash any more. They told me that they were going to start a suit to act as power of attorney.

Q. (By Mr. Hurley): And didn't they tell you that they wouldn't cash any more checks? [111]

A. Well, I didn't ask to cash any more. When they started——

Q. Will you answer the question? Didn't they tell you that they wouldn't cash any more checks signed by you on his account?

A. No, there was nothing said.

Q. They didn't tell you that?

A. I don't remember what was said. It was quite an argument when I went in there. Lou had also asked me to ask them about that other will that he had in there, to tell them that it was no good any more. He made another will and I asked Frank DeWree about it and Frank told me that there wasn't anything there to his recollection.

Appellant's Exhibit A-1—(Continued)
(Testimony of Thelma Gregor Hayes.)

Q. Now—— A. So I told Lou that.

Q. Now, getting back to the money. How much money did you draw out of Lou's account?

A. I am not sure.

Mr. Taylor: If the Court please, she's answered this a half a dozen times.

Q. (By Mr. Hurley): Well, that's his money. What became of it?

A. I am not sure how much I spent on Lou or how much I drew out. It went. It's a little amount. Quite a bit spent during the time he was sick and I can't remember the amount. [112]

Q. What amounts had been spent after he went to the hospital prior—that you spent for him prior to the 22nd day of October?

A. Well, lot of small sums.

Q. How much?

A. I can't say because I took him to the hospital——

Mr. McCarrey: If the court please——

Q. (By Mr. Hurley): You took him to the——

Mr. McCarrey: I am going to object to the whole line of testimony. It does not draw the proof of the competency of Mr. Colbert to execute a will and what passed between the bank and this witness has absolutely no bearing on it whatsoever. It's immaterial and irrelevant.

The Court: Objection sustained.

Mr. Hurley: I think that's all.

Appellant's Exhibit A-1—(Continued)

Mr. McCarrey: No re-direct, your Honor. That's all.

(The witness left the stand.)

The Court: Court will recess for 10 minutes.

(A recess of ten minutes was taken.)

Mr. McCarrey: Your Honor, the record isn't too clear on what these exhibits in fact state—are. Would the court please take the time to go over them and put in the record what they are? [113]

The Court: Petitioner's exhibit "A" is probate file 1114, Louis D. Colbert, guardianship. Petitioner's exhibit "B," probate file number 1141, Louis D. Colbert, deceased. It is the matter of the estate of Louis D. Colbert deceased. Petitioner's exhibit "C," probate file number 1145 in the matter of the estate of Louis D. Colbert, deceased. Petitioner's exhibit "D" is the last will and testament of Louis D. Colbert, executed 22nd day of October, 1946. Petitioner's exhibit "E" is the power of attorney executed by Louis D. Colbert, 17th day of October, 1946. Exhibit—Petitioner's exhibit "F" is a list of charges and list of transactions, piece of notebook paper. Petitioner's exhibit "G" is an authorization to allow Thelma Hayes to have access "to my safe deposit box" signed by Louis D. Colbert, witnessed by Kenneth D. Wire and Arthur A. Benz. Petitioner's exhibit "H" is a bank statement from the First National Bank together with checks covering the months of September, 1946, and October, 1946.

Mr. McCarrey: Your Honor, will you note the

Appellant's Exhibit A-1—(Continued)
number of checks listed on that statement please?

The Court: There are eight checks listed on the statement and there are 10 checks attached to the statement.

Mr. McCarrey: And does it show who signed those checks as the maker? [114]

The Court: Checks are signed by L. D. Colbert.

Mr. McCarrey: Thank you.

The Court: Petitioner's exhibit "I" is a real mortgage executed by Thelma D. Hayes—correction, Thelma D. Gregor in the presence of June Brown and E. B. Collins executed on the first day of December, 1943, being between Thelma D. Gregor, party of the first part and L. D. Colbert, party of the second part. Petitioner's exhibit "J," real estate mortgage executed by Thelma Gregor Hayes witnessed by Grabelle Leigh and Mary McDonnell and executed on the 22nd day of January, 1946, between Thelma Gregor Hayes and L. D. Colbert. Petitioner's exhibit "K" is a receipt dated July 6, 1946, signed by L. D. Colbert and was in payment in full with interest on the Graehl Circle Bar mortgage. The amount \$1224, no cents. Exhibit—Petitioner's exhibit "L" is a letter dated February 21, 1947, addressed to Mr. Louis Dale Colbert, Box 730, Fairbanks and signed Emma. She identifies herself in the letter as sister. Those are all of the exhibits.

Mr. McCarrey: Thank you, your Honor. At this time, I would like to ask permission to—of leave of the Court to call Mr. Taylor back with reference to a direct question. However I can put in rebuttal if

Appellant's Exhibit A-1—(Continued)

the Court desires, but I think at this moment it will be more opportune in light of time. [115]

MR. WARREN A. TAYLOR

previously sworn, resumed the stand and testified as follows:

Direct Examination

By Mr. McCarrey:

Q. Mr. Taylor, I will ask you if you know what became of the will number two which was signed by three witnesses and which is Petitioner's exhibit "D" after it was executed by Mr. Colbert in the presence of those three witnesses on or about the 22nd day of October, 1946?

A. At the request of Mr. Colbert, I took it to my office and placed it in the safe there until the time that I drew up the petition to revoke the letters of administration that had been granted to the bank and letters testamentary to Thelma Hayes.

Q. Do you remember at what time that was?

A. The exact date——

Q. Is in the records?

A. Is in the record. I would have to look at the record.

Q. Did you have a discussion with Mrs. Hayes with reference to the will after that day?

A. After which date do you mean?

Q. After execution of the will, October 22nd?

A. No, until—nothing after Lou Colbert's death.

Mr. McCarrey: That's all.

Appellant's Exhibit A-1—(Continued)
(Testimony of Mr. Warren A. Taylor.)

Cross-Examination

By Mr. Hurley:

Q. That when she signed the petition, was [116] it?

A. No, the petition was a little bit later than that. I don't know whether I was out of town or——

Q. Little bit later?

A. A little time elapsed. Some time elapsed after his death before we filed the petition.

Q. A little time? A. Yes.

Q. What is the date on the petition, your Honor?

A. The record will show.

The Court: Mr. McCarrey, you mentioned Exhibit "D." That's——

Mr. McCarrey: I am in error then.

The Court: You were referring then to exhibit "C."

Mr. McCarrey: Yes, your Honor. Thank you for the correction.

Mr. Boggess: Just a moment, your Honor. Isn't Exhibit "C" the second will for which probate is sought here?

The Court: Exhibit "C" is the will which is—the probate of which is sought here.

Mr. Boggess: Exhibit "D" is the will that was executed prior to that will.

Mr. McCarrey: I was referring to Exhibit "C."

The Court: Exhibit "C" is the one that the three witnessed. [117]

Appellant's Exhibit A-1—(Continued)

(Testimony of Mr. Warren A. Taylor.)

Q. (By Mr. Hurley): This petition was filed on the 31st day of July, 1947, by Thelma D. Hayes, is that right?

A. That's about that. If you have the record in there——

Q. And then nothing was ever done with it until the present time?

A. Well, yes, there was something done in it. We petitioned to revoke the letters of administration which had been given to the bank and file an inventory of appraisal as required by law.

Q. That was after it was filed? A. What?

Q. There was a motion made asking them to file an inventory and appraisal?

A. To file an inventory and appraisal, yes.

Q. And the inventory and appraisal was then filed? A. Last fall, last November.

Mr. Hurley: That's all.

Mr. McCarrey: One question, please.

Redirect Examination

By Mr. McCarrey:

Q. But in your petition which was filed by Mrs. Hayes, you ask for revocation of the former letters testamentary didn't you?

Mr. Hurley: That shows for itself. [118]

A. I can explain that. At first I had to draw up a straight petition for letters testamentary under the will, but in the meantime, the bank had applied

Appellant's Exhibit A-1—(Continued)
(Testimony of Mr. Warren A. Taylor.)

for letters of administration and they were granted and then I later drew up letters to revoke the—petition to revoke the letters of administration and grant them to the person having the prior right under the will.

Mr. McCarrey: Thank you. Petitioner rests at this time, your Honor.

Mr. Hurley: Could we have about a ten minute recess, your Honor? I want to call Doctor Schaible.

Mr. McCarrey: Couldn't we proceed with some other witness?

Mr. Hurley: No, I want to call him first.

The Court: There will be a ten minute recess.

(A ten minute recess was taken.)

Mr. Hurley: We call Doctor Schaible.

ARTHUR JOHN SCHAIBLE

called as a witness in behalf of the Defendant, being first duly sworn, testified as follows:

Direct Examination

By Mr. Hurley:

Q. Will you state your name, please?

A. Arthur John Schaible. [119]

Q. And what is your profession, doctor?

A. I am a physician and surgeon.

Mr. McCarrey: We will stipulate to his qualifications, Mr. Hurley.

Appellant's Exhibit A-1—(Continued)

(Testimony of Arthur John Schaible.)

Mr. Hurley: As a practicing doctor in Alaska?

Mr. McCarrey: Yes.

Q. (By Mr. Hurley): How long have you been practicing here in Fairbanks, doctor?

A. Since 1941.

Q. And did you practice here—have you had occasion to be called to observe persons who were charged with being insane? A. Yes.

Q. A great many occasions? A. Yes.

Q. And you observed those people for some length of time would you before there would be a hearing in their case? A. Yes.

Q. And you had a great deal of experience of that kind since coming here to Fairbanks, have you not? A. Yes.

Q. Now, were you acquainted with Louis D. Colbert in his lifetime? A. Yes. [120]

Q. How long had you known Mr. Colbert before he came to you for medical attention, if at all?

A. I am not sure, but I think about two or three years.

Q. I see. When did he come to you for medical attention? About what time was it when he came to you first in 1946?

A. Oh, I saw him in—here's a report on 1945, here's another in 1943. I treated him in 1943, July of 1943 and then again in November of 1945 and December of 1945 and then I saw him again October of 1946.

Q. And did he come to your office in 1946?

Appellant's Exhibit A-1—(Continued)
(Testimony of Arthur John Schaible.)

A. Yes, he——

Q. In the early part of October, was it?

A. Yes.

Q. And did he come there to your office for treatments? A. Yes.

Mr. McCarrey: Will you please establish the date, as to what date that was in October?

Q. (By Mr. Hurley): Do you know when it was that he first came to your office in October or September of 1946?

A. I saw him on the 8th and 9th of October.

Q. Didn't you see him before that?

A. I probably did, but I don't have a record of it.

Q. You don't have any record of it?

A. No. [121]

Q. What was his condition when you saw him in your office on the 8th of October, 1946?

Mr. McCarrey: Now, I object to that question as not properly stated. Condition of what? In what respect?

Mr. Hurley: Every respect.

Mr. McCarrey: Well, your Honor——

Mr. Taylor: Finance?

Mr. Hurley: No. As to health.

Mr. Taylor: Oh, pardon me.

Witness: He was a man aged and his general health was deteriorating. I had known him previously in 1945 and he was always neat in his habits and when I saw him on the 8th of October, he was very slovenly in his appearance. His bodily proc-

Appellant's Exhibit A-1—(Continued)

(Testimony of Arthur John Schaible.)

esses, his general everything had slowed up. I recall very distinctly that it seemed to take him forever to dress and undress. He was very unsteady. He was very unclean. His underwear was dirty. He wasn't the same. He didn't act the same as he had before. His general health—I saw all the stigma of a generalized arteriosclerosis. That's a hardening of the arteries and it's a disease that comes on with aged people and it affects different people differently.

Q. And what did you do then with him?

A. I recommended—on the 8th I told him to come back the next day as I recall it, and he did come back. He wasn't [122] doing too well and his odor was offensive to the people in the waiting room, so I recommended that he go to the hospital.

Q. Did you arrange for him to go to the hospital at that time on the 9th?

A. Yes, he went to the hospital on the 9th.

Q. Did you call up the hospital about him?

A. I suppose I did. We made the arrangements and he went over to the hospital.

Q. That was on the 9th of September, 1946?

A. Ninth of October.

Q. Ninth of October, 1946?

A. 1946, yes.

Q. And did you see him after that in the hospital in October, after the 9th, when he went over there?

Appellant's Exhibit A-1—(Continued)
(Testimony of Arthur John Schaible.)

A. Yes, I saw him every day up to the 20th—up to the 20th of November.

Q. And what did you notice in regard to his physical condition? I will ask you first, after he went to the hospital, what was wrong with him there during that time?

A. I found the same. I didn't change my opinion of him. He was a man whose body showed the ravages of a hardening of the arteries. This was manifested by a poorly functioning heart, poorly functioning kidneys, poorly functioning brain.

Q. And how did his bowels and kidneys [123] operate?

A. Well, he had albumen in his urine. He had all the stigmas that you find with hardening of the arteries. The arteries in the kidneys get hard too. There were times when he had no control over his urine. His heart, his brain wasn't too good.

Q. This question of hardening of the arteries. Is that a cause of insanity? A. Yes, it can be.

Q. Now, what was his mental condition after he arrived in the hospital?

A. Well, he was disorientated. His memory was very, very poor. He—his reasoning was affected.

Q. How about hallucinations?

A. Yes, he had those too.

Mr. Taylor: He had what?

Mr. Hurley: Hallucinations.

Q. (By Mr. Hurley): And from your examinations and visits that you made there to the hospital

Appellant's Exhibit A-1—(Continued)

(Testimony of Arthur John Schaible.)

each day during the time he was there, what is your opinion as to his—in regard to the soundness of his mind, whether he was of sound and disposing mind, particularly on the 22nd day of October, 1946?

Mr. McCarrey: I object to that, your Honor. The witness has testified the last time he saw him was on the 20th day of October. [124]

Mr. Hurley: The last time he saw him he said was in November.

The Court: November.

Mr. McCarrey: I beg your pardon. I stand corrected.

Witness: I think mentally he was unsound.

Q. (By Mr. Hurley): You think he was capable of executing a will?

Mr. McCarrey: Now, your Honor, I object to that question as——

Mr. Hurley to Witness: As required——

Mr. McCarrey: Just a moment, please. Let me get the objection in the record here; that counsel here has not properly laid a foundation to answer such a question. How does Doctor Schaible know what the competency of a will is?

The Court: Objection sustained.

Q. (By Mr. Hurley): Doctor Schaible, have you had experience in connection with wills as to what—as to whether or not a man is competent to execute a will or not, whether he is of sound and disposing mind? Do you know what is meant by that term, sound and disposing mind? A. Yes.

Appellant's Exhibit A-1—(Continued)
(Testimony of Arthur John Schaible.)

Q. And was Mr. Colbert on the 22nd day of October, 1946, [125] of sound and disposing mind?

A. No.

Q. It is your opinion that he was competent to execute a will? A. No.

Q. Was he competent to take care of his business affairs? A. No.

Q. And did you testify in the case in which the First National Bank of Fairbanks, Alaska, had applied for letters of guardianship to take care of the business of Mr. Colbert? A. Yes.

Q. And did you testify at that time that he wasn't competent to take care of his own affairs?

A. Yes.

Q. What is the date—in your opinion, was he competent to take care of his affairs, business affairs of any kind on the 22nd day of October, 1946?

A. No.

Q. You say the cause of his mental trouble is what is commonly known as a hardening of the arteries? A. Yes.

Q. And what is the legal term for this?

A. Arteriosclerosis.

Q. And what was your finding as to his mental condition? What was the term? [126]

A. Well, it is a form of insanity. It is a senile dementia. It is a regression of mental processes and it is classified as one of the forms of insanity.

Mr. Hurley: That's all, you may cross-examine.

Appellant's Exhibit A-1—(Continued)

(Testimony of Arthur John Schaible.)

Cross-Examination

By Mr. McCarrey:

Q. Doctor Schaible, you testified on direct examination I believe that you knew what a requisite was for sound and disposing memory, is that correct? Would you please tell the court what this is, a sound and disposing mind?

A. Well, it would be, should be someone who knows what he wants, who is orientated, someone who knows what time of the day it is, someone who doesn't try to build a fire in the middle of the room. It is someone who has his wits about him.

Q. Well, what do you mean, "wits about him," doctor? Will you please explain?

A. Well, I mean someone who knows what the score is.

Q. Score about what?

A. About his business affairs.

Q. In your opinion then Doctor Schaible, does it mean the same then as managing his business affairs?

A. No, it isn't exactly the same thing.

Q. Well, should it be on a par with being able to manage his business affairs? [127]

A. Will you restate that question again please for me?

(The question was read by the reporter.)

A. I don't think a person who is not of a sound

Appellant's Exhibit A-1—(Continued)
(Testimony of Arthur John Schaible.)

and disposing mind should—would be able to manage his business affairs.

Q. Will you just answer the question doctor? The question was whether or not a person to be of sound and disposing memory would have to be on the same basis as one who could manage his business affairs?

Mr. Hurley: We object to that.

Mr. McCarrey: Now, your Honor—

Mr. Hurley: Irrelevant and immaterial, not proper cross-examination. There is no provision for anything of that kind either in medicine or in law that I have ever heard of as putting it on the same basis.

Mr. McCarrey: Excepting this, your Honor, Doctor Schaible has put himself on the witness stand here and stated that he knows what a person has to be in order to be of disposing memory. Now, I want to know what—

Mr. Hurley: He didn't say anything about disposing memory.

Mr. McCarrey: Disposing mind.

Mr. Hurley: He said sound and disposing mind is what he testified to.

Mr. McCarrey: I am trying to find out what his answer is about a sound and disposing mind. [128]

Mr. Hurley: Well, ask him.

The Court: Objection overruled.

Mr. McCarrey to Witness: Will you state the answer please?

Appellant's Exhibit A-1—(Continued)

(Testimony of Arthur John Schaible.)

Witness: I still don't understand the question.

Mr. McCarrey: Mr. Reporter, will you please read that last question?

(The question was read by the reporter as follows:

“Will you just answer the question doctor? The question was whether or not a person to be of sound and disposing memory would have to be on the same basis as one who could manage his business affairs”?)

Mr. Hurley: I object to that because that wasn't the question that was asked him, nothing said about sound and disposing memory.

Mr. McCarrey: I will state, your Honor, sound and disposing mind.

Q. (By Mr. McCarrey): And now, I do ask you directly, Doctor Schaible, do you consider a person to be competent who would have to be in order to make a will, he would have to be on the same basis as an individual who could manage his affairs?

A. Yes, I should think so.

Q. Did Mr. Colbert ever talk to you about making a will, Doctor Schaible? [129]

A. No.

Q. Did you know he made a will?

A. No.

Mr. McCarrey: May I have exhibits “C” and “D” respectively?

Q. (By Mr. McCarrey): Now, I ask you Doctor Schaible, if you will take Petitioner's Exhibit “C” and I turn to the last will and testament dated

Appellant's Exhibit A-1—(Continued)
the 22nd day of October, 1946, signed by L. D. Colbert and would you compare that with the Petitioner's exhibit "D" which is also signed on the same date, and ask after you have had sufficient time to go over them whether or not a person who was incompetent would be able to do and execute and make such a change as therein stated?

Mr. Hurley: We object, if the court please, incompetent, irrelevant and immaterial. It's not stated what he's referring to, nothing to show that any change was made by L. D. Colbert.

Mr. McCarrey: All right then. Your Honor, I will point out to the witness that the first will which is Exhibit "D" has some interlineation and I point specifically to them. It is initialed by Mr. Colbert and then I ask the witness to turn to the same paragraph which is set forth in Exhibit "C" and ask him if a person who was incompetent could reason out such a change? [130]

Mr. Hurley: We object to that if the court please as incompetent, irrelevant and immaterial, not proper cross-examination, no evidence to show that he ever reasoned out any change at all, no evidence to show that he ever wrote on that first will other than to initial it.

Mr. McCarrey: Excepting this, your Honor. I would like to point out that Doctor Schaible has put himself on the witness stand and testified that he is qualified and that also that Lou Colbert was at that time incompetent and this is testing what Doctor

Appellant's Exhibit A-1—(Continued)

(Testimony of Arthur John Schaible.)

Schaible, the witness, knows about such incompetency.

Mr. Hurley: But it is assuming some changes not in evidence, your Honor. There is no evidence that he reasoned out any change at all, that he dictated it or anything else. That is, Doctor Schaible doesn't know that he made the change or anything else. He doesn't know anything about it. He wasn't there. He wasn't asked to be there.

The Court: Objection overruled.

Mr. McCarrey: Go ahead, doctor.

Witness: You're referring to these changes whether a man of sound mind or unsound mind could have made these changes, is that it?

Mr. McCarrey: Yes.

Witness: I am going to look at this change at this thing that he has written in himself. [131]

Mr. Hurley: It is my contention it was never written in. No evidence that it was.

The Court: It was written in by another party and initialed by Colbert.

Mr. McCarrey: But at the request of Colbert.

The Court: Yes.

The Witness: Would you mind reading this for me. This change, this sentence, it doesn't sound,—

Mr. McCarrey: Reading from paragraph two of the Petitioner's exhibit "D" which is the last will and testament of Louis D. Colbert, I read as follows:—

Mr. Hurley: Is that the writing?

Appellant's Exhibit A-1—(Continued)
(Testimony of Arthur John Schaible.)

Mr. McCarrey: Yes.

Mr. Hurley: That isn't the last one, is it?

Mr. McCarrey: It is the last will and testament, but it is exhibit "D."

The Witness: I just want the written part. That's what you're referring to, that he wrote that in himself?

Mr. McCarrey: It is: "providing certain portions of property be willed if any persons listed by me to Thelma Gregor Hayes at later time" and initialed L.D.C. "Providing certain portions of property be willed to if any persons listed by me to Thelma Gregor Hayes at later time," then initialed by him. [132]

The Witness: That's the part I don't understand. The sentence doesn't make sense. This is the—says here—I am not paying any attention to this other part because I presume that was drawn out by an attorney, but the part that he wrote in himself: "providing certain portions of property be willed to if any persons," that doesn't make sense to me, "listed by me to Thelma Gregor Hayes at later time." "Be willed to if any persons." You have a bunch of prepositions there and I can't understand it.

Q. (By Mr. McCarrey): Well, I am asking you that question regardless of whether you can or not. I am trying—you testified——

A. It doesn't make sense to me.

Q. Now, referring to Petitioner's exhibit "C"—

Appellant's Exhibit A-1—(Continued)

(Testimony of Arthur John Schaible.)

“D” first and read from it: “I hereby bequeath unto Thelma Gregor Hayes, of Fairbanks, Alaska, all my property, real, personal and mixed, wheresoever situate, and of every kind and nature, of which I may die possessed, or to which I am entitled at the time of my death, to be and become her sole and separate property; provided however, the said Thelma Gregor Hayes shall pay to my sister, Emma Colbert, of Indianapolis, Indiana, the sum of \$25.00 per month so long as my said sister shall live, the same to be paid out of the income or principal of my estate” and then, “providing” further “certain portions of property be willed to if any persons listed by me to [133] Thelma Gregor Hayes at later time” and signed L. D. Colbert. Now, referring to Exhibit “C,” I read the following: “I hereby bequeath unto Thelma Gregor Hayes, of Fairbanks, Alaska, all my property, real, personal and mixed, wheresoever situate, and of every kind and nature, of which I may die possessed, or to which I am entitled at the time of my death, to be and become her sole and separate property; provided however, the said Thelma Gregor Hayes shall pay to my sister Emma Colbert, the sum of One Thousand Dollars; also providing that the said Thelma Gregor Hayes convey certain portions of property now possessed by me to such persons as may be designated by me prior to my passing away.” Is that clear——

Mr. Hurley: We object to that as incompetent,

Appellant's Exhibit A-1—(Continued)
(Testimony of Arthur John Schaible.)

irrelevant and immaterial, not proper cross-examination, nothing to show that it had been dictated by L. D. Colbert. The evidence shows that Mr. Taylor drew that. We are not questioning counsel's ability to draw a will or not. I don't see why the doctor should pass on that.

Q. (By Mr. McCarrey): Doctor Schaible, I would like to present a hypothetical question to you. If on or about the 17th day of October, 1946——

Mr. Hurley: What date was that?

Mr. McCarrey: 17th day of October, 1946. [134]

Q. (By Mr. McCarrey—Continuing): A person executed a will, executed a power of attorney to an individual; assuming further that on or about the 22nd day of October, 1946, that the same individual called his attorney and asked him to draw a will which his attorney did prepare and then, according to his direction, and then assuming a step further, that this same individual did call his attorney again and have him come back and make a correction to the original will; would a person of that mental status be competent to dispose of his property and to execute any will?

Mr. Hurley: We object to that as incompetent, irrelevant and immaterial.

Mr. McCarrey: It is a hypothetical question.

Mr. Hurley: All the evidence——

Mr. McCarrey: Your Honor, that——

Mr. Hurley: Will you let me finish my objection? The reason that there is nothing in the ques-

Appellant's Exhibit A-1—(Continued)

(Testimony of Arthur John Schaible.)

tion to show that Colbert did anything more than just sign a power of attorney and sign his name to a couple of wills.

Mr. McCarrey: I submit that to the court. There's plenty of evidence that he did many many things than that.

The Court: Objection overruled.

Mr. McCarrey to Witness: Go ahead, please.

Witness: Yes.

Q. (By Mr. McCarrey): What is that answer?

A. This was a hypothetical question and I said "Yes."

Mr. Hurley: What do you mean by that?

Witness: I meant a person who he said a person who desired to make a will on the 15th and called an attorney to make the will according to his instructions and then later signed it and later called him back presumably—someone who did all that I would say he is of presumably of sound and disposing mind, if he did it according to his directions.

Mr. McCarrey: That's all.

Redirect Examination

By Mr. Hurley:

Q. Was Mr. Colbert at that time on the 17th of October and on the 22nd of October, was he of sound and disposing mind? A. No.

Mr. Hurley: That's all.

Mr. McCarrey: Just a moment please.

Appellant's Exhibit A-1—(Continued)
(Testimony of Arthur John Schaible.)

Recross-Examination

By Mr. McCarrey:

Q. Doctor Schaible, does your record disclose whether or not you saw Lou Colbert on the 17th day of October, 1946? [136] A. Yes.

Q. Does it show that you saw him on the 19th?

A. Yes.

Q. You're sure of that?

Mr. Taylor: If the Court please, let us have the record show what Doctor Schaible is testifying from. What is this?

Witness: This is the hospital record kept by the nurses at St. Joseph's Hospital on Mr. Colbert.

Mr. Taylor: Thanks. We didn't have any record on that.

Witness: And on the 17th it lists the medication he got, who visited him, what sort of day he had.

Q. (By Mr. McCarrey): Does it show that you visited him that day doctor? A. Yes.

Q. Does it show that you visited him on the 19th day? A. No, it doesn't say on the 19th.

Q. Does it show you visited him on the 20th?

A. Yes.

Q. Does it show you visited him on the 25th?

A. 25th?

Q. Yes. A. No.

Q. Then you didn't visit every day up to the 9th day of [137] November, did you doctor?

Appellant's Exhibit A-1—(Continued)

(Testimony of Arthur John Schaible.)

A. Yes, I believe I did. The nurse probably made an ommission.

Q. May I see the records please? A. Yes.

Q. Doctor Schaible, when a man with this senile type of structure to which you referred Mr. Colbert had at this time, have periods when he would be clear and of disposing memory?

A. I think so.

Q. Is it possible? A. It is possible.

Mr. McCarrey: That's all.

Mr. Hurley: Just a minute, Doctor.

Redirect Examination

By Mr. Hurley:

Q. Were you his doctor when he died?

A. I am not positive.

Q. Do you know what he died of?

A. He died of generalized arteriosclerosis, arteriosclerotic heart disease.

Q. (To Mr. McCarrey): Do you have any objections to that record being admitted in evidence?

Mr. McCarrey: I can't see——

Mr. Hurley: Doctor Schaible's?

Mr. McCarrey: It was kept at the hospital.

Mr. Hurley: It was kept under his direction.

Mr. McCarrey: No, I object to that, your Honor.

Mr. Hurley: Then I don't care to offer it.

Mr. Taylor: The doctor has testified from it and

Appellant's Exhibit A-1—(Continued)
(Testimony of Arthur John Schaible.)

it is in the record. There's no effort made to identify it or place it as an exhibit.

Mr. Hurley: I just asked if there was any objection to it. If you have, I won't offer it. That's all, doctor.

Mr. McCarrey: I would like to ask one more question.

Recross-Examination

By Mr. McCarrey:

Q. How do you know what Mr. Colbert died of, Doctor Schaible?

A. Because of the general trend of his health and having diagnosed many other cases just like that and knowing his physical condition as of the last day that I recall seeing him. I presume most likely that he died of that same process that had started 10 years previously. Whether I took care of him at his death, I can't recall. I don't even remember whether he died in this hospital or not.

Q. So as a matter of fact, you don't know what he died from, do you doctor?

A. He could have been hit by an automobile. No, I don't.

Q. Yes. You see, he died some 6 months later.

Mr. Hurley: He died what? [139]

Mr. McCarrey: He died some 6 months later.

Q. (By Mr. McCarrey): I think you testified Doctor Schaible that you saw him the last day on the 19th day of November, 1946?

Appellant's Exhibit A-1—(Continued)

(Testimony of Arthur John Schaible.)

A. I saw him last at this visit. I don't know whether I saw him after that or not. I don't recall.

Q. Professionally, that's the last time you recall having seen him?

A. That's what I recall now. The hospital record may show that I took care of him at the last. I don't know.

Q. But it is a fact that you didn't take care of him, isn't it doctor?

A. No, I don't remember. You take care of a lot of people and I don't remember whether—this one is over 4 years ago.

Q. You remember that you were there on the 19th day of November? A. Yes.

Q. How come you don't know that you took care of him then?

A. I took care of him at that time, yes, but I don't know whether I took care of him in his last illness or not.

Mr. McCarrey: That's all.

Mr. Hurley: That's all doctor.

ANDREW NERLAND

called as a witness in behalf of the Defendant, being first duly sworn, testified as follows: [140]

Direct Examination

By Mr. Hurley:

Q. Will you state your name please?

A. Andrew Nerland.

Appellant's Exhibit A-1—(Continued)
(Testimony of Andrew Nerland.)

Q. And what business are you engaged in?

A. In the business across the street there, paint and furniture.

Q. How long have you lived in Fairbanks, Alaska. A. Forty-six years.

Q. Were you acquainted with Lou Colbert?

A. I was.

Q. How long had you known Mr. Colbert before he died? A. Oh, good many years.

Q. About how many?

A. Oh, I think I must have met him quite a while, probably around in the 30's.

Q. And were you well acquainted with him?

A. Yes, I was.

Q. And did you and he belong to any organizations? A. Yes, I did.

Q. What were you and he members of?

A. Pioneers of Alaska.

Q. And do you remember when Lou became sick and went to the hospital in October, 1946?

A. Yes. [141]

Q. And did you have any occasion while he was in the hospital to go over and see him?

A. Yes.

Q. Why did you go over to see him?

A. Well, because he had been reported sick through the Pioneer meetings. Some of the members had been there to see him.

Q. And how long after you heard he was sick

Appellant's Exhibit A-1—(Continued)

(Testimony of Andrew Nerland.)

in the hospital was it that you went over to see him? About how long after he went there was it?

A. Well, it might have been quite a little while, but anyway I was told by some of the boys.

Mr. McCarrey: I object to what he had been told.

Witness: I am just going to say how it happened that I went to see him. All right? I went to the hospital to see him. I knew he was sick. I didn't know but I was told that he was sick.

Q. (By Mr. Hurley): Was that two or three weeks after he had gone to the hospital?

A. Well, I don't remember exactly.

Q. You don't remember exactly?

A. No, I don't. Could have been that long at least.

Q. You don't remember about when that was that you went [142] over there? That was——

A. In the fall. It was in the fall of the year. In October I guess, along about there.

Q. How many times did you go over, Mr. Nerland?

A. Well, I went over to see him twice. It was—I went over to see him one time and if I am not mistaken about that, I went there for a short time. That was quite a while before this. He had been there, over there, and whether he had gone out in between times, I kind of think he did. I went to see him one time quite a while before and talked with him. We made a little sick visit to him.

Appellant's Exhibit A-1—(Continued)
(Testimony of Andrew Nerland.)

Q. When you went to see him in October, did you see and visit and talk to him?

A. In the room and talked to him, yes.

Q. What was his condition there mentally when you talked to him?

A. Well, I came in there and understood that he had been sleeping. But I came in there and I said, "Hello, Lou" and he says, "Hello Andrew." I says, "How are you?" He says, "Oh, I am pretty good now." I says, "Yeah, well, that's fine." "You know," he says, "I got to get out of here. I got an awful lot of work to do, all this work between McGrath and here." He says "Got to be looking after a lot of work and I got to get out of here." Well, anyway, I told him you better stay until you get a little better, [143] something like that, and so it was just about finished on my visit.

Q. Well, did you have any other conversation with him at any other time?

A. No, that was the last time I saw him.

Q. Did you have a conversation with him before that?

A. Oh, the other time?

Q. Any other time.

A. Yeah, I was there that time, but it seems like that was quite a while before.

Q. What impression did you get from talking—

A. You mean the first time I was there to see him?

Appellant's Exhibit A-1—(Continued)
(Testimony of Andrew Nerland.)

Q. What impression did you get from talking to him?

Mr. McCarrey: Well, wait a minute. I would like to have the time established.

Q. (By Mr. Hurley): When did you see him there in October?

Mr. McCarrey: Well, now, your Honor, I submit that the witness hasn't testified that he had seen him in October, for certain.

Witness: Yes, I said—I certainly did. I am certainly sure I saw him in October.

Mr. McCarrey: What year was that?

Witness: In 1906,—in 1946 I believe.

Mr. McCarrey: Was this the first time or the second time you went over? [144]

Witness: I saw him a short time before that, but it certainly was quite a while, probably during the same summer before October.

Mr. McCarrey: Did he die while he was in the hospital that time?

Witness: He died shortly after I had been over this time, this last time, yes.

Q. (By Mr. Hurley): Well, now, he died—when was it he died?

Mr. Taylor: May 17th.

Witness: May?

Mr. Hurley: May.

Q. (By Mr. Hurley): Was that—that was shortly before May, 1947. Was it then that you saw him the last time?

Appellant's Exhibit A-1—(Continued)
(Testimony of Andrew Nerland.)

A. No, I don't think so. I don't keep track on the dates but I thought it was in the fall of the year.

Q. It wasn't—he died in May according to what they have testified to.

A. I wouldn't know the date he died either.

Q. What was his condition the first time you saw him?

A. Well, his condition was better then than it was the last time I saw him.

Q. What impression did you get as to his mentality, as to his mind? [145]

A. He certainly changed. I didn't believe he was quite rational the first time I was over there. My impression the last time I was over there was certainly different.

Mr. Hurley: That's all.

Cross-Examination

By Mr. Taylor:

Q. Mr. Nerland, just for the purpose of clarifying your testimony, the testimony of the witnesses show that Mr. Colbert first time was in the hospital in October of 1946.

A. Uh-huh.

Q. And he stayed there for some time and then went out and later on came into the hospital sometime in the early part of May and when he got out, when he was left there that time, he was taken out dead. He died. So, you went to see him one time when he first went in there and then you went in again to see him during the period——

Appellant's Exhibit A-1—(Continued)

(Testimony of Andrew Nerland.)

A. I could be mistaken on the dates. I didn't keep any dates.

Mr. Taylor: Just to clarify it in your own mind as to what times he was in there.

Mr. McCarrey: Just a moment, please. That's all.

Mr. Hurley: That's all.

MIKE STEPOVICH

called as a witness in behalf of the Defendant, being first duly sworn, testified as follows: [146]

Direct Examination

By Mr. Hurley:

Q. What is your name?

A. Mike Stepovich, Jr.

Q. And where do you live?

A. I live in Fairbanks, Alaska, 103 Charles Street.

Q. How long have you lived in Fairbanks?

A. I was born in Fairbanks and all together, about the last 15 years, last 14 years straight through.

Q. Were you acquainted with Lou Colbert?

A. Yes, I knew him.

Q. How long had you known him before he died?

A. About 13, fourteen years.

Q. Were you here in Fairbanks in October, 1946?

A. Yes, I was.

Q. When did you come here?

Appellant's Exhibit A-1—(Continued)
(Testimony of Mike Stepovich.)

A. I came here around October the 10th. I stayed here about two weeks or about 10 days.

Q. And during that time after between the 10th and the 20th of October, did you see Lou Colbert in 1946? A. Yes, I did.

Q. Where did you see him?

A. At the St. Joseph's Hospital.

Q. How did you happen to go over there?

A. Before I left to come up here, we had some business [147] for the estate is the reason I came up and my mother told me to be sure to look up Lou Colbert because the family had moved down there. Lou and my dad were great friends for years, and I went over to see him.

Q. Did you talk to him? A. I did.

Q. What was his mental condition when you saw him there between the 10th and the 20th of October, 1946?

A. When I first started talking to him, he asked me how the family was. I said "Fine" and all of a sudden, he says, he knew we were down there in California, he says, "I think I'll put on my shoes and walk down to California with you" and then he would ask me again about the family and then he would—another statement he made to me was that if "I wasn't so far from town and out in the creeks, I would put on my clothes and go into town" and then I talked to him a little more and then I left.

Q. And from your conversation with him, would you say that he was sane or insane?

Appellant's Exhibit A-1—(Continued)

(Testimony of Mike Stepovich.)

A. My conversation is—my opinion is that he was insane at that time.

Q. And approximately what time would you say that was? Was that a few days after you arrived here that you went over?

A. I would say it was around the 13th or 14th. I don't [148] exactly know the date.

Q. Of September—or October, 1946?

A. 1946 in October, yes.

Mr. Hurley: That's all.

Cross-Examination

By Mr. Taylor:

Q. Did you ever go back and see him again, Mike? A. Never did.

Q. And you hadn't been there before?

A. No, I hadn't been there before.

Q. Did you know the nature of his ailment, why he was in the hospital? A. I did not.

Q. And you didn't know whether he had been under opiates or sedatives of some sort when you were talking to him? A. I did not know it.

Q. Did he know you when you first came in?

A. When I first came in he did.

Q. And he knew about your family?

A. He talked about my family.

Q. He asked about your family? A. Yes.

Q. And I believe your father and Mr. Colbert were interested in some claims on some of the creeks

Appellant's Exhibit A-1—(Continued)
(Testimony of Mike Stepovich.)

around here together. Did they have joint interests in some claims? [149]

A. I believe they did up in Gilmore. I'm not sure.

Q. And at the time you went over, did you go over to have Mr. Colbert sign any papers, Mike?

A. No papers. I just went over to see him.

Q. As a friend of the family?

A. That's right.

Q. And when you were talking to him and mentioned the family, is it possible that when he said that he felt like getting up and putting on his shoes and going to see the family, it might be in a joking manner?

A. My personal opinion, it wasn't. It wasn't in a joking manner. That's my own opinion.

Q. Would you say he was having hallucinations?

A. His speech—as I say, he talked alright for about a minute and then he would go off on something and then come back and then go off again.

Q. But you don't know what his condition was on the 22nd day of October?

A. I do not know.

Q. Or the 21st of October?

A. No, I don't.

Mr. Taylor: That's all.

Mr. Hurley: That's all.

Appellant's Exhibit A-1—(Continued)

FRANK DeWREE

called as a witness in behalf of the Defendant, being first duly sworn, testified as follows: [150]

Direct Examination

By Mr. Hurley:

Q. What is your name?

A. Frank P. DeWree.

Q. How long—where do you live?

A. Fairbanks, Alaska.

Q. How long have you been here?

A. In the city since 1919.

Q. Were you acquainted with Lou Colbert in his lifetime?

A. Yes, sir.

Q. And where do you work?

A. At the First National Bank.

Q. And what position do you hold there in regard to probating of estates and guardianship matters?

A. I am trust officer.

Q. And are you acquainted with Thelma Gregor Hayes?

A. I am.

Q. Did Lou Colbert bank with your bank?

A. He did, yes.

Q. And carried it there for a long time?

A. Yes, he did.

Q. Have you any record of the money that he had in there and deposited in there in July, August, September, along in there, 1946 and the checks that were written on his account? [151]

A. I have a record of that from June, 1946, on

Appellant's Exhibit A-1—(Continued)
(Testimony of Frank DeWree.)

the balance showing the balance at the end of 1946 and some of the checks, not all of the checks. There is a record of the checks that were charged, but we don't have all the checks. Some of the checks have been delivered.

Q. From the record, can you state how much money was deposited during the months of June and July, 1946?

A. Yes, it will show on the records.

Q. How much was deposited in his account in June?

A. Not for June. I can give it to you for July.

Q. How much on the first of July, 1946?

A. The balance in his account as of June 27, 1946, was \$388.56.

Q. How much was deposited in July?

A. \$75. Like deposit in August, \$75.

Q. Have you got any record of the checks that were drawn against—have you got checks that were drawn against his account in October, 1946?

A. Yes. I have the one statement for the period of October 15, 1946, up to until the final closing of the account.

Q. Let me see that. I hand you this statement and these checks and ask you to state what those are?

A. Well, this is a record of his account from October 15th until October 31st, showing a balance as of October 15th of \$411.97 and at the end of October had been reduced [152] to \$54.80.

Appellant's Exhibit A-1—(Continued)

(Testimony of Frank DeWree.)

Q. Are those the checks that were drawn against his account?

A. Checks drawn and charged up.

Q. How many checks during that period?

A. During that period, five checks.

Mr. Hurley: I offer these 5 checks and the statement in evidence as one exhibit.

Mr. Taylor: We object, your Honor. It has no bearing upon the issues in this case. It doesn't tend to prove or disprove the sanity of the testator, Louis D. Colbert.

Mr. Hurley: They are not offered entirely for the purpose of showing his sanity. It is offered to show what was sworn to by Thelma Gregor, to contradict the testimony of her testimony that was admitted in evidence.

Mr. Taylor: I—also introduced in evidence was a power of attorney from Mr. Colbert to her to execute those checks, your Honor. They just clutter the record putting a bunch of——

Mr. Hurley: That power of attorney was introduced.

Mr. Taylor: It shows, the power of attorney shows what was to be done in regard to his business, that he delegated somebody to take care of it while he was sick. This is—— [153]

Mr. Hurley: Your Honor, it shows——

Mr. Taylor: It has no bearing upon the issue. She said she didn't remember how many checks——

Mr. Hurley: It shows that she was drawing his

Appellant's Exhibit A-1—(Continued)
(Testimony of Frank DeWree.)

money out and why that application was made.

The Court: Objection overruled.

Mr. Hurley: I ask that those be marked as Defendant's Exhibit one.

Q. (By Mr. Hurley): Now, Mr. DeWree, when these checks began to come in, did you make any investigation in regard to Mr. Colbert's condition? Did you make any inquiry?

A. Well, we started looking into it and we heard that he wasn't too well.

Q. Did you talk to Doctor Schaible about his condition? A. I believe I did.

Q. Did you talk to me about it?

A. Yes, sir.

Q. And did you file a petition on the 23rd day of October, 1946, asking the bank be appointed guardian? A. I did.

Q. Did you ever visit Lou over there yourself?

A. No, I didn't.

Q. You didn't see him yourself?

A. No, sir. [154]

Q. But you did file a petition on account of what you found out about his condition?

A. We did.

Q. And you were appointed—the bank was appointed as guardian of his property and person?

A. Yes, sir.

Q. As shown by the files? A. Yes, sir.

Mr. Hurley: I think that's all.

Appellant's Exhibit A-1—(Continued)

(Testimony of Frank DeWree.)

Cross-Examination

By Mr. Taylor:

Q. Mr. DeWree, did you testify that you went and filed a petition without knowing what the mental condition of Mr. Colbert was?

A. Well, I think we spoke to the doctor. The doctor brought it to our attention that his condition was not very satisfactory and I believe another person, Charlie Lingrin.

Q. A doctor, was he?

A. No, just a friend who had been visiting.

Q. Because a person was sick and might have temporary hallucinations, would that necessarily denote that he was insane and would have to have a guardian appointed?

A. That would be up to the Court to decide, I believe.

Q. And then on hearsay evidence, you filed a complaint [155] charging Mr. Colbert with being an insane person?

Mr. Hurley: No, he did not.

Witness: No, I didn't say that.

Q. (By Mr. Taylor): You filed a petition for an appointment of guardian.

A. Yeah, we agreed that he required a guardian. If he needed someone to take care of his bank business, we figured he should have a guardian appointed.

Appellant's Exhibit A-1—(Continued)
(Testimony of Frank DeWree.)

Q. But you had no personal knowledge yourself except what you heard, is that right?

A. Yes, I didn't see anything.

Q. Would you want somebody to act towards you if you were in the same condition as you acted towards Mr. DeWree—towards Mr. Colbert?

A. I believe I left somebody else to look after—I think my other parties in my family would, but he didn't have any other members of his family.

Q. You're just a banker looking after his affairs? A. Pardon?

Q. You were just a banker then looking after his affairs?

A. Yeah, I believe the condition of his checking account, the way the money was going out, we figured——

Q. When you were appointed guardian, were you appointed the guardian of his person also?

A. I believe everything. [156]

Mr. Hurley: The evidence shows as to how the appointment was made.

Witness: I don't know without looking in the file.

Mr. Hurley: The record is in evidence.

Q. (By Mr. Taylor): Do you know whether or not you were the guardian of his estate and person? Do you know—did you, Mr. DeWree in any way interest yourself in his physical welfare after you were appointed his guardian?

Appellant's Exhibit A-1—(Continued)

(Testimony of Frank DeWree.)

A. We couldn't see him to get near him. We couldn't get him out of Thelma Gregor's clutches.

Q. Did you pay for his board any place?

A. No, sir.

Q. Or see that he was well taken care of?

A. No, sir.

Q. Did you go and see him when somebody else was taking care of him?

A. We heard that somebody else was, yes.

Q. While you were—did you go and see him while somebody else was taking care of him?

A. I didn't visit.

Q. Did you know that Thelma Gregor was taking care of Mr. Colbert?

A. That's what we heard. [157]

Q. Feeding him and giving him a place to sleep?

A. He had his own home.

Q. What? A. He had his own place.

Q. Well, he had his own place? He was incompetent! Would you allow an incompetent—him as an incompetent to go and live alone at his home up on Gillam Way? You, being his guardian, would you allow him to go up and live alone?

A. Isn't it all subsequent to this?

Q. That was all after you were appointed guardian. In other words you were his guardian of his estate and person, but it devolved upon somebody else to take care of Mr. Colbert, didn't it?

A. We didn't take any part in the administration. She just held right on, wouldn't let go of him,

Appellant's Exhibit A-1—(Continued)
(Testimony of Frank DeWree.)

wouldn't deliver the keys to the house or nothing; wouldn't surrender anything.

Q. Well, how many times did you see Mr. Colbert after you were—the bank was appointed guardian of his estate? A. I forget.

Q. As trust officer of the bank, you looked after those particular affairs, do you not?

A. Gee, I don't remember now.

Q. Did you go over to Thelma Gregor's to see Lou at any time? A. No. [158]

Q. And after he went back to the hospital the second time, did you go over there?

A. The second time? When was that?

Q. He got out of the hospital and went back. The time he died. Did you go see him then?

A. No, I didn't see him.

Q. Were you collecting the rentals from Lou's houses at that time? A. No, we weren't.

Q. You received no money?

A. I understood that she had made a lease with someone.

Q. While you were—the bank was acting guardian of the estate and person of Lou Colbert, did you collect any monies for his account, for his account?

A. I would have to look at our record now. I couldn't say how much.

Q. Well, now——

Mr. McCarrey: I can't hear the witness, your Honor.

Appellant's Exhibit A-1—(Continued)

(Testimony of Frank DeWree.)

The Court: Beg pardon?

Witness: I don't believe we collected anything during the guardianship, very small amount.

Q. (By Mr. Taylor): Well, now what services did you, did the bank render then as guardian of the estate of Lou Colbert? What did you [159] do? You didn't look after his personal welfare. You didn't look after any of the property.

A. She had it all tied up.

Q. What?

A. She had it all tied up already.

Q. But the important point is that you were the guardian. It was your duty to untangle it or untie it if necessary.

A. Well, I think the account of the report of the guardianship would show that.

Mr. McCarrey: Your Honor, I can't hear the witness. Would you please ask him to take the mike?

The Court: Take the microphone.

Witness: The report of the guardianship would probably show that.

Q. (By Mr. Taylor): Well, who gave the information from which the report of the guardian was filed? You are the trust officer. Did you give the information?

A. The information was furnished to the attorney for making up the report.

Q. Are you positive that you did not collect

Appellant's Exhibit A-1—(Continued)
(Testimony of Frank DeWree.)

any rents on the account of the guardianship of Lou Colbert?

A. I am not positive. I have to refer to the records when we started collecting rents.

Q. It is possible that somebody might have paid some rents?

A. I don't believe it was, but I can't say for sure. [160]

Mr. Taylor: That's all.

Redirect Examination

By Mr. Hurley:

Q. There wasn't any money in the estate at the time the bank was guardian, was there?

A. No. We had to put up some fees ourselves.

Mr. McCarrey: At the time the bank was started?

Mr. Hurley: Yes.

Mr. McCarrey: What bank was started?

Mr. Hurley: Only one bank was guardian that I know of.

Mr. McCarrey: Sorry, I misunderstood you.

Q. (By Mr. Hurley): And when was the—you knew about the mortgages that Lou held against the—mortgage and the judgment against Thelma Gregor? A. Yes.

Q. That was foreclosed? A. Yes.

Q. That wasn't finished until after the bank was appointed administrator, was it?

Appellant's Exhibit A-1—(Continued)

(Testimony of Frank DeWree.)

A. That's right.

Q. And the first money that came into the estate was that money which was paid after the building was sold and the mortgage foreclosed against Thelma Gregor, is that right? [161]

A. We received money from that and we received some rents from some cabins on Gillam Way. I forget just when that was. I think it was during the administration of the estate though.

Q. The principal property of the estate was money that was recovered on the judgments that he got on his mortgages against the property of Thelma Gregor, isn't that right?

A. Yes, that's right.

Mr. Hurley: That's all.

Mr. McCarrey: Your Honor, may I ask him a question?

Recross-Examination

By Mr. McCarrey:

Q. Mr. DeWree, you just testified on redirect examination that you collected some money on a mortgage that Mr. Colbert had. How much was that?

A. We collected the money on the foreclosure of a judgment and then on the fire insurance we collected some.

Q. How much was that?

A. I haven't the records with me here. Approximately?

Appellant's Exhibit A-1—(Continued)
(Testimony of Frank DeWree.)

Q. Yes. A. Around nine thousand.

Q. Around \$9,000? A. Yes, sir.

Q. Is that cash? [162] A. Yes, sir.

Q. Where is that cash? At the present time?

A. On deposit in the trust fund.

Q. At which bank? A. First National.

Mr. McCarrey: I would like to ask one question on prior direct examination if I may. The witness testified that he had his checking account in the First National Bank. May I do so, your Honor?

Q. (By Mr. McCarrey): Did Mr. Colbert have all his money in the First National Bank?

A. I wouldn't know.

Q. As his guardian, you didn't check to see if he had money elsewhere then?

A. No, we never did.

Q. Did you? You ought to know. You're the guardian.

A. Took it for granted it was in our bank all the time. We never saw any place—any other place.

Q. So, you didn't check on the other bank?

A. Not that I remember. I don't believe I did.

Q. And did you check to see if he had money anywhere else besides the other bank?

A. No, we found nothing to intimate that he did.

Q. But you didn't check further did you, Mr. DeWree? [163]

A. There was nothing to check on.

Q. But did you or did you not check further?

Mr. Hurley: Check with who?

Appellant's Exhibit A-1—(Continued)
(Testimony of Frank DeWree.)

Mr. McCarrey: With anybody to see if he had any more money elsewhere.

Witness: You will have to see some corroborating evidence to give a reason to check further.

Q. (By Mr. McCarrey): But did you?

A. Didn't find nothing.

Q. Well, you didn't, did you?

A. Didn't find nothing to check.

Mr. McCarrey: That's all.

Mr. Taylor: That's all.

Mr. Hurley: That's all. I will call Mr. Stroeker.

The Court: Mr. Hurley, this exhibit that you offered into evidence has been marked Defendant's exhibit "A"—Defendant's exhibit 1. It will be marked Defendant's Exhibit 1.

(Bank statement and 5 checks were received in evidence and marked Defendant's Exhibit 1.)

EDWARD H. STROEKER

called as a witness in behalf of the Defendant, being first duly sworn, testified as follows: [164]

Direct Examination

By Mr. Hurley:

Q. What is your name?

A. Edward H. Stroeker.

Q. How long have you lived here in Fairbanks,

Mr. Stroeker? A. Since 1904.

Appellant's Exhibit A-1—(Continued)
(Testimony of Edward H. Stroeker.)

Q. And you have been connected with the First National Bank—— A. 32 years.

Q. For 32 years. And you're president now are you not? A. What?

Q. You're president of the bank now?

A. Yes.

Q. Were you acquainted with Louis D. Colbert in his lifetime? A. Very well.

Q. How long had you known Lou before he died?

A. Oh, I knew him many years when he was on the creeks and hard rock mining and other mining. I couldn't say off hand. Probably 20, 30 years.

Q. At least that long? A. Yes.

Q. Were you—you remember when he became ill in October of 1946?

A. Well, I knew that he was ill in the fall of the year 1946. I don't know exactly what time, but I know that he was quite ill as a man that wasn't in his right mind. [165]

Q. Were you——

Mr. Taylor: Just a moment. We are going to object; that the answer be stricken as not responsive to the question and calls for a conclusion of the witness.

The Court: Objection sustained.

Mr. Taylor: Proper foundation has not been laid for an answer——

The Court: Objection sustained.

Appellant's Exhibit A-1—(Continued)

(Testimony of Edward H. Stroeker.)

Witness: I would say that he was not in his proper mind.

Mr. Taylor: Just a moment. There's no question. I move that there's been—has been no question propounded to the witness.

The Court: Objection sustained.

Q. (By Mr. Hurley): Just a minute, Mr. Stroeker. Do you remember when Lou went to the hospital that fall in 1946?

A. Yes, it was in the fall of 1946. I remember that very well.

Q. You remember that he went over there?

A. Yeah.

Q. You heard about him being there?

A. Yeah.

Q. Now, did you see him in the hospital while he was over there? A. No. [166]

Q. Did you see him a short time before he went to the hospital?

A. I had seen him a short time before he went to the hospital.

Q. And where did you see him?

A. I saw him right in the bank at my—he was at my desk.

Q. And what was the occasion of him coming there at that time? How did you happen to see him? Just tell what transpired between you and him up at the bank at that time.

A. Well, I don't quite recall all of our conversation. That's quite a ways back, but I know I had

Appellant's Exhibit A-1—(Continued)

(Testimony of Edward H. Stroeker.)

talked with him about his mortgages and things relative to real and chattel mortgages and insurance and things of that kind and he didn't seem to understand anything at all about it and he said, "My attorney knows." I said, "Lou, that has nothing to do with it. You should know yourself. Do you know what to do with a chattel mortgage when it becomes due and how long it takes a chattel mortgage to become due and what you should do for the renewing of it"? And I went over many of those things with him and to be sure that he had his insurance and the insurance was made so that he would benefit through any loss that there may be. I took up many things with him, but he didn't seem to grasp those things at all. He said, "Well, my lawyer knows all those things."

Q. Had you known Lou years before that?

A. What? [167]

Q. You knew Lou Colbert years before that, did you not? A. Yes.

Q. What was his condition then as to knowing about things?

A. Well, Lou seemed to know all right. He made loans and he seemed to make out all right.

Q. Did he seem to be a pretty bright man?

A. Yes. He wasn't a weak man. He was a fairly bright man.

Q. Did you notice a difference when you saw him at the bank that time before he went to the hospital and what he had been before that?

Appellant's Exhibit A-1—(Continued)

(Testimony of Edward H. Stroeker.)

A. Oh, I noticed that as soon as he come in. The look on his face and the eyes and the way he wore his hat. It was just cross-wise on his head and so on. I thought, "My God, what has happened to poor old Lou"? I had heard different rumors, but those I presume are not permissible, but I did hear rumors about him and then I was quite convinced when I saw the man and talked with him and he didn't talk rational to me at all and his dress and everything was absolutely contrary to the way he did dress himself up otherwise.

Mr. Hurley: That's all. You may cross-examine.

Cross-Examination

By Mr. Taylor:

Q. Mr. Stroeker, about when was that conversation with Mr. Colbert? [168]

A. Oh, it was sometime I think in the fall of 1906 or thereabouts. I don't recall just exactly when it was. You know it is a long time and one can't remember from day to day and recall exactly the following day what has taken place today. I have always made an allowance for that with myself. I couldn't say absolutely that such and such a thing had taken place because I know well enough that someday you talk to people and the next day you can't say absolutely what your conversation was.

Q. That same reasoning might hold in the case

Appellant's Exhibit A-1—(Continued)
(Testimony of Edward H. Stroeker.)
of Lou saying he had nothing to do with the chattel and real mortgages.

A. Well, I took that up with him and I explained thoroughly to him, but he didn't seem to understand that at all. He said "Well, that was up to my attorney to worry about that."

Q. Doesn't that show an intelligence on his part?

A. No.

Q. When he leaves it up to his attorney?

A. No, not in my mind.

Q. (Laughter.)

A. That's why—I may have an instrument drawn up by you but unless I look over that instrument myself and know what the contents of it are, why, I don't know what to do with it. Supposing that you give a man a mortgage——

Q. Yeah. [169]

A. And it is a chattel and you don't explain to him when that chattel is due and when the real is due——

Q. Yeah.

A. And looking after the insurance to see if there is insurance and that he seemed—he didn't seem to know anything about it.

Q. Well now, from that, the average layman would possibly be declared incompetent because isn't it a fact that the average layman don't know anything, little, if anything about—— (Interrupted.)

A. Oh, no, he was too bright a man himself.

Appellant's Exhibit A-1—(Continued)

(Testimony of Edward H. Stroeker.)

He had known what he was doing. Mr. Colbert was no fool. When he was in his right mind he was a man of good intelligence. He wouldn't have been able to put over deals such deals as he had on the quartz claims and so on that he had unless he was a man of some intelligence. He had to know something about his business and he come from a good intelligent family.

Q. What is the present law, Mr. Stroeker, in regard to renewing chattel mortgages?

A. What is the present what?

Q. What is the present law in regard to——

A. Well, you have one year after the cancellation—one year after the due date of the chattel to renew, to take that over.

Q. The layman can do that all right. The layman that owns [170] the mortgage, he can do that.

A. Well, he would take that to his attorney and have him fix that up for him, to look after the renewal of it.

Q. That was what Lou was doing, leaving that to his attorney.

A. The attorneys don't look after that. After they make their mortgages out, they're through with that. They don't file that and look after your business for nothing afterwards. If I have you make out a mortgage, a renewal and insurance, you pay no more attention. You get your fee when it is made out and that's ended right there. You have

Appellant's Exhibit A-1—(Continued)

(Testimony of Edward H. Stroeker.)

gotten your fee so I have to take—to use my own judgment thereafter.

Q. Do you know whether or not Mr. Colbert ever renewed any of his chattel mortgages?

A. Well, that wasn't up to me to——

Q. Whether Mr. Colbert did or not?

A. What?

Q. Whether Mr. Colbert renewed the chattel mortgage?

A. No. That wasn't up to me to look after——

Q. No, I would not think so. Do you know whether or not Mr. Colbert renewed any chattel mortgages as he was required by law?

A. Well, that doesn't come under my—that's his personal affairs. That isn't my affair. Just as I say, when you get your fee, you're through with the man and he looks after his [171] own affairs until he comes to you again and which he will have to pay you another fee for looking after his affairs and he didn't come to me—I look after my own and he looks after his own and if he is making loans outside of the bank, it isn't up to the banker to turn around and look after another man's affairs for him.

Q. Did you and Mr. Colbert have any quarrel at the time you had the conversation?

A. Oh, no. I never quarreled with Lou at all. Never had any occasion to quarrel with him. I very seldom quarrel with anyone at all. That isn't part of my business to quarrel with people. I think one must use a little diplomacy when they're in business.

Appellant's Exhibit A-1—(Continued)

(Testimony of Edward H. Stroeker.)

Q. Mr. Stroeker, at that time, did Mr. Colbert ask to get the will that he had left with the bank?

A. No, he didn't take that up with me. Had he done so, I would have referred him to the trust officer. That does not come under my department at all. That's what my trust officer is paid for to look after those things and I don't interfere with his business unless he comes to me or unless I think he is doing something that is not quite right. Otherwise, he uses his judgment. That's what he is paid for, for the knowledge he has in handling trust accounts and so on.

Mr. Taylor: Yeah. That's all.

Mr. Hurley: That's all, Mr. Stroeker. I [172] would like to be sworn, your Honor.

MR. JULIAN A. HURLEY

being first duly sworn, testified as follows in behalf of the Defendant.

Mr. Hurley: My name is Julian A. Hurley and I am an attorney for the First National Bank in this matter now before the Court. I have been acquainted with Lou Colbert for about 20 years or more and was very well acquainted with him. I was acquainted with him when he was running for the legislature. He and I went to Nenana, a town on the railroad, and campaigned together. I was running for Senator at the time and he was running for the Territorial House of Representatives and I was his attorney for a good many years

Appellant's Exhibit A-1—(Continued)
(Testimony of Julian A. Hurley.)

in different matters prior to the time of his death. He was administrator of the estate of William Kelly, deceased, and I was his attorney in that estate. That was an estate in which there was no will and he applied as a creditor for letters of administration. I also prepared a good many papers for him such as mortgages and different papers of that kind and I saw papers that were kept by him. Referring to Plaintiff's exhibit "F," I wish to state that I have seen this before, but at the time that I saw it, it was in a book from which it appears to have been torn. It was a book that was kept by Lou Colbert in his own handwriting. It was a book with a limber back that had sheets in it the size of this sheet and he had in this particular page references to [173] Kelly's estate of which he was administrator and for which I was attorney and prepared the papers. But in addition to this, there was many other entries there showing money loaned and all in his own handwriting. I don't know where the book is or what became of it, but I recognize this sheet when it was introduced in evidence as coming from that book I had seen. I went over to visit Lou Colbert in October, 1946, after he had entered the hospital and I went over there after the 17th of October and prior to the 23rd day of October. I do not remember the exact date but it was between those days and the reason I fix that is because at the time before I went over there I heard that Thelma Gregor had got authority, signed

Appellant's Exhibit A-1—(Continued)

(Testimony of Julian A. Hurley.)

by Lou Colbert, authorizing her to write checks on his account in the bank which was written on the 17th of October and I prepared the petition on the 23rd day of October filed with the appointment of the First National Bank of Fairbanks to be guardian of his estate. And I went over to see myself prior to the time that I filed that petition as to what his condition was. I heard rumors in regard to him after he had entered the hospital. I went over there with Harvey Van Hook, who had known Lou a good many years, and I think I forget how he happened to go with me, but it was on account of some conversation we had in regard to Lou and we went over to see him and we went—when we got there, we went to Lou's room and I spoke to him [174] and he spoke to me and I didn't know that he was as ill as he was, although I had heard he had been quite sick and then after a few seconds he looked up and he said, "How did you get over here?" He said, "You had to come all the way from McGrath." "Oh," I says, "no, Lou. We weren't over in McGrath." I said, "We were over in town." "Well," he says, "how did you get over here? It's a long ways." I says, "We just walked across the bridge," and he looked up and kind of grinned and he says, "I can see the bridge from here." So I asked him something else again and he said—oh, yes, I asked him, "Who's your doctor?" He says, "He is Doctor Schaible." He says, "You know, he owns this place here." I says, "Owns the

Appellant's Exhibit A-1—(Continued)

(Testimony of Julian A. Hurley.)

hospital?" "Yes," he says, "he owns the whole thing." So, I said, "Well, Lou, how are you feeling?" "Oh, pretty good," he says. He says, "You know," he says, "I've got some claims out and everything settled up clear passed my claims here from Chatanika, everything's settled up now," and I said, "Oh, no, Lou, just a little ways out here." He says, "No, everything's settled up," and I talked with him a little longer. Harvey and I, we left and we came back. I forget just what time of the day it was. It was during, might have been little before noon or little after. I think it was a little after noon. I am not sure of the time. But, anyway, I came back over and then I went over to the bank and spoke to Frank DeWree and then I went [175] and got the papers from the 23rd and filed the petition.

I was attorney for the bank as administrator and filed the foreclosures. There was a first mortgage against Lou's property but which was owned by to Albert Bernard. I finished up the foreclosure on that and then I had this case on Lou's mortgage. Lou had the second mortgage. Well, then I forget just exactly when it was, but Allison got a judgment, attached the Graehl Circle Bar, got a judgment against Thelma Gregor and Lou came to talk to me about paying that judgment off. I forget just when that was and I advised him not to do it. I said, "You have to pay the first mortgage off and you haven't got the

Appellant's Exhibit A-1—(Continued)

(Testimony of Julian A. Hurley.)

money.” I says, “I don’t know whether or not the property will sell for enough to get your money out of the arrest judgment or not,” and he promised me that he wouldn’t take it up, but he did afterwards and I was quite surprised. He came to me and says he was going to do it, but I got the assignment of it. We took an assignment of that judgment and he paid it off and I noticed then that his health was not too good, but I didn’t think about him being so bad until I—after I found out and until I went over there. I could see after going over to see him that he wasn’t mentally as strong and alert in the summer of 1946 as he had been prior to that time. That’s all I wish to state. Oh, yes, I would like to make a statement that—one more statement, pardon [176] me. In my experience as United States Attorney in Anchorage for 21½ years and United States Attorney here for 9 years, I have had considerable experience conducting examinations before the Court in connection with persons charged with being insane and not of sound mind. From my conversation with Lou Colbert and my observation of him over there and his actions, I would say that in my opinion he wasn’t of sound mind. I thought that he was just as crazy as any man I ever saw committed to the asylum.

Cross-Examination

By Mr. McCarrey:

Q. As a matter of fact, Mr. Hurley, you were

Appellant's Exhibit A-1—(Continued)
(Testimony of Julian A. Hurley.)

appointed by the court to be his attorney, to represent him at the time of the incompetency hearing?

A. No, sir.

Q. May I see Exhibit "B"?

A. I prepared the petition for the bank at the request of the bank, filed it asking that they be appointed guardian because of his incompetence to handle his business.

Q. I beg your pardon. It is Exhibit "A." Now, were you present at the time they had the insane hearing? A. I did what?

Q. Were you present at the time that they had the insane hearing?

A. At what hearing? [177]

Q. The incompetency hearing or insane hearing?

A. They had a hearing for an appointment of guardian. I was present, yes.

Q. Was Mr. Colbert present at that time?

A. No, he didn't appear.

Q. Was he—who represented him at that time?

A. Nobody represented him at the the hearing.

Q. He didn't have an attorney at all.

A. No. There was an attorney appeared. Mr. Clasby appeared and asked for a continuance. The court granted it and then after that nobody showed up. It was set and they had a hearing there and I don't remember anybody being there at the time for Lou Colbert at the time the hearing was held.

Q. You as an attorney in the Territory of Alaska— A. What?

Appellant's Exhibit A-1—(Continued)

(Testimony of Julian A. Hurley.)

Q. I say, you as an attorney permitted to practice law in the Territory of Alaska have conducted hearings before, have you not?

A. What kind of hearings?

Q. Insanity or incompetence hearings?

A. I conducted a lot of hearings where men were accused of being insane or up for being charged for the purpose of sending them to the asylum.

A. And isn't it generally the practice, Mr. Hurley, that they appoint someone at that [178] hearing?

A. They do at those hearings, yes.

Q. And it is your testimony there was no one appointed at this time?

A. This wasn't that kind of a hearing.

Q. What kind was it?

A. This was a hearing on the application of the bank as appointment as guardian.

Q. Guardian of what?

A. Of Lou Colbert on account of him being incompetent to handle his own business.

Q. Of person and property?

A. I forget how it is worded, whether it is person and property or whether it's just property. I forget how that was. I don't remember. It is all set out in the record of procedure there, but I don't remember it offhand.

Q. And isn't it your understanding, Mr. Hurley, that it is customary that—to have someone

Appellant's Exhibit A-1—(Continued)
(Testimony of Julian A. Hurley.)

appointed?

A. Not in that kind of proceeding.

Q. They never had nobody there?

A. Nobody was there that I remember of. He was served a notice and he took the matter up with an attorney and Mr. Clasby appeared in connection with the matter. That's all set out in the record.

Q. Yet he was in the hospital?

A. And no showing was made. [179]

Q. And he was in the hospital at the time?

A. Yes, he was in the hospital.

Q. And the hearing was held even though he was in the hospital and didn't have an attorney?

A. Sure the hearing was held.

Q. Did the jury see Mr. Colbert?

A. There wasn't any jury.

Q. No jury?

A. No, certainly not. There's no provision for a jury in that kind of proceeding in the code. The code provides the procedure and there's no jury provided there.

Q. Now, Mr. Hurley, I believe you testified that you did some work for him?

A. A lot of it at different times, yes.

Q. Did you do any work for him during the summer of 1946?

A. I don't remember for sure. I saw him at times and he was in pretty bad health. I know he could hardly get up at times. He was in the office and I remember several times when he would sit

Appellant's Exhibit A-1—(Continued)

(Testimony of Julian A. Hurley.)

down there, somebody had to take hold of his hands to get him up.

Q. Is that unusual? A. That was in 1946.

Q. Is that unusual?

A. It was for him, yes, because he had never been that way before. [180]

Q. Isn't it——

A. Not many people that come into the office that I remember where you have to take hold of their arm to help them get up.

Q. Now, did you do any work for him during the month of July, 1946?

A. I can't tell you. I don't think so.

Q. Did you do any work for him during the month of August? A. I don't think so.

Q. Did you do any work for him during the month of September?

A. I don't believe I did.

Q. Did you do any work for him on the 23rd of September, 1946?

A. No, I don't believe—I don't think I did anything for him in September.

Q. I will ask you if you have had occasion to see Mr. Colbert on the 23rd day of September, 1946?

A. 23rd of September?

Q. Yes. A. No, I don't think so.

Q. Was Mr. Colbert at your office on the 23rd day of September, 1946?

A. I don't think so.

Q. When was the last time you saw Mr. Colbert

Appellant's Exhibit A-1—(Continued)
(Testimony of Julian A. Hurley.)

before he went to the hospital if you recall? [181]

A. Well, I would say it was sometime in the summer, but exactly the month I wouldn't be able to say. Whether or not I did any work for him the last time I saw him before he went to the hospital, I wouldn't be able to say that either.

Q. I believe you testified on direct examination that he was not too competent during the summer of 1946?

A. That he was not what?

Q. Too competent mentally.

A. He didn't seem like he was. I wouldn't say that he was incompetent when I saw him in the summer of 1946, but he seemed kind of dull and not like he was before, because Lou was keen, quick and bright and he slowed up a lot, that I just figured that it was health and I didn't think about him, his mind being off at that time. So, that must have been around May or June probably.

Q. And you don't think you saw him after that time?

A. I'd tell you if I did.

Q. And you don't think you did any work after that?

A. I am pretty sure I didn't.

Q. I hand you piece of paper and ask if you can identify it?

A. Oh, this was the assignment of the Allison judgment. Yes, that was in September, 1946. I didn't think it was that late. [182]

Q. What date was that please?

A. 23rd of September.

Appellant's Exhibit A-1—(Continued)

(Testimony of Julian A. Hurley.)

Q. Who prepared that? A. I did.

Q. At whose request did you prepare that?

A. Lou's.

Q. Was Mr. Colbert competent on the day that he signed that?

A. Well, I didn't think he was incompetent at that time.

Q. If you did, you wouldn't have signed that, would you?

A. No. I advised him—it is just as I said before—not to sign this, not to pay that judgment off because he couldn't afford it and it took practically all of his money. I knew that.

Q. Did he pay——

A. And I—he told me that he wouldn't, so he came in with Thelma——

Q. I think that's repetition. I think you have already testified——

A. And he asked me to prepare the assignment of the judgment. I don't know whether he paid me. I don't know how it was.

Q. Did he pay you for that?

A. I don't think he did. He may have. I don't remember. He might have paid me. I handled that case and worked in that case. [183]

Q. Is this your signature on the reverse side as notary public? A. It is.

Q. And is that your signature as witness on the other side? A. Yes, that's mine.

Q. And——

Appellant's Exhibit A-1—(Continued)
(Testimony of Julian A. Hurley.)

A. I am just mistaken in the time when I saw him, that's all.

Q. Was Peggy Lyle present?

A. She was my—she was present.

Q. And she signed the same time you did?

A. Yes.

Q. Was Mrs. Hayes present at that time?

A. I wouldn't be positive.

Q. Is this her signature there? A. Who?

Q. Mrs. Hayes?

A. Oh, yes. She was present when that was signed.

Q. In other words, you wouldn't notarize that unless she was present, would you?

A. No. She was there at the time.

Mr. McCarrey: That's all, your Honor.

Mr. Hurley: That's all. I will call Harvey Van-Hook.

Mr. McCarrey: Your Honor, the reporter is getting pretty tired. Could we have a 5 minute recess? [184]

Mr. Hurley: This is the last witness. It will be pretty short, just a few questions.

The Court: We will adjourn for 5 minutes.

(A 5 minute recess was taken.)

Appellant's Exhibit A-1—(Continued)

HARVEY VanHOOK

called as a witness in behalf of the Defendant, being first duly sworn, testified as follows:

Direct Examination

By Mr. Hurley:

Q. What is your name? A. VanHook.

Q. What is your first name? A. Harvey

Q. Where do you live, Mr. VanHook?

A. Right now in the Nordale Hotel.

Q. In Fairbanks? A. Yes, sir.

Q. How long have you lived in Alaska?

A. Since 1898.

Q. And what has been your business mostly?

A. Mining.

Q. Were you acquainted with Louis D. Colbert in his lifetime? A. Yes, sir; I was.

Q. How long had you known Lou before he died? [185]

A. Oh, it was in the summer in the 30's when he come to the Forty Mile prospecting. First time I met him was in the 30's.

Q. I see. What was Lou's business?

A. He was prospecting there.

Q. And that was the first time you knew him?

A. That was the first time I met him.

Q. Did you belong to the Pioneers of Alaska?

A. Yes, sir.

Q. Here in Fairbanks? A. Yes, sir.

Q. Did Lou belong?

Appellant's Exhibit A-1—(Continued)
(Testimony of Harvey VanHook.)

A. Yes, I think he did.

Q. And had you seen him around Fairbanks before he took sick and went to the hospital in 1946?

A. Oh, yes; I saw him right along for a little while.

Q. I see. Were you and he good friends?

A. Yes, sir.

Q. Did you go over to see Lou not long after he went to the hospital?

A. Yes, I was over there just 2 or 3 days after he went to the hospital. He was there and I went over to see him and you went with me too.

Q. That was after he went to the hospital?

A. Yes.

Q. You don't remember what date that [186] was? A. I don't remember the date.

Q. There is nothing by which you can fix it by?

A. No, not for the dates. I don't remember the dates.

Q. Just tell the court how it happened that you went over there?

A. Well, I met you on the street and I asked you if he was in the hospital. You and he were good friends. You said "Yes," you had heard he was there and you asked me if I saw him and I said "No." You said, "Let's go over and see him" so we went over and seen him that afternoon. Right then we went over.

Appellant's Exhibit A-1—(Continued)

(Testimony of Harvey VanHook.)

Q. Was there anybody else there when we were in there that you remember of?

A. I don't think there was.

Q. Do you remember what was said there by——

(Interrupted)

A. Well, yes—— (Interrupted)

Q. (Continuing): Lou and the rest of us?

A. (Continuing): I do remember some things that he said. He knew us both. He seemed to be rational when we went in. He says to you, he says, "How did you come over here?" You said, "We walked over" and he shook his head and says, "That's a long walk. I've been up there and it's a long walk. Which way did you come by, McGrath Road"? You said, "No, we just walked across the bridge from the Federal Building here. You can see the bridge here." He said, [187] "Yes, I see the bridge" and he hesitated a while and started talking again and by and by he says, "This side of the river here is building up might fast in this part of town." You said—he was talking direct to you—and you said, you told him it was a—a—he says says, "This town is going to be built out to Chatanika" and he "owned a lot of property over here too." After that he talked a while. He seemed to get rational then later on. We got ready to go. We didn't stay very long. When we started away, he seemed all right. He says, "I am glad you boys come over and come over again." He seemed all right then, but before he was talking wild.

Appellants Exhibit A-1—(Continued)
(Testimony of Harvey VanHook.)

Q. What?

A. He talked wild, we come from McGrath, which way did we come from McGrath and it was a long way to walk.

Q. Did he sound—did his talk sound to you like a man who was mentally sane? A. No.

Q. What?

A. No, he wasn't mentally sane then.

Q. What was the impression you got as to the condition of his mind?

A. I thought plain that his mind was away, he was just permanent off.

Mr. Hurley: That's all. You may [188] cross-examine.

Cross-Examination

By Mr. Taylor:

Q. Mr. VanHook, how old are you?

A. How old am I?

Q. Yeah. A. I am past 79.

Q. And you base your opinion upon Mr. Colbert's mental state by one visit?

A. Oh, I have known him for a good many years and I went to see him back after that, but when I went the next time to the hospital he was asleep. I didn't talk to him and the next time I was there, he was gone.

Q. So, you say because you went over there once and he had hallucinations, you base your opinion as to his being insane, is that right?

Appellants Exhibit A-1—(Continued)

(Testimony of Harvey VanHook.)

A. Yes, sir.

Mr. Taylor: That's all.

Mr. McCarrey: That's all.

Mr. Hurley: We rest, your Honor.

Mr. McCarrey: We have some rebuttal. It won't take very long. I call Mrs. Hayes.

MRS. HAYES

resumed the stand.

Rebuttal

By Mr. McCarrey:

Q. Mrs. Hayes, I will ask you if you know whether or not [189] Doctor Schaible attended Mr. Colbert at the time of his death?

A. He did not.

Q. At the time Mr. Colbert was in the hospital, did Mr. Colbert ever give you any pills?

A. Yes, every day he would give me some after the first 4, 5 days.

Q. What were those pills?

A. I don't know what they were, little white pills. He told me the nurse gave it to him; he didn't want to take it; they didn't do him any good.

Q. Do you know what he did so that he didn't take them?

A. He just kept these pills instead of taking them, keep them and threw it away or something.

Mr. McCarrey: Now, we offer this for identification, your Honor?

Appellants Exhibit A-1—(Continued)
(Testimony of Mrs. Hayes.)

Mr. Hurley: What is it?

Mr. McCarrey: It is a renewal of a chattel mortgage.

The Court: Petitioner's identification number 13.

(Chattel mortgage received and marked as Petitioner's exhibit number 13 for identification.)

Q. (By Mr. McCarrey): I hand you this and ask if you can identify it?

A. It is an affidavit of renewal of a chattel mortgage. [190]

Q. Whose signature appears thereon?

A. L. D. Colbert.

Q. Where did that come from, if you know?

A. Well, we had a renewal made of the mortgage.

Q. And where has that been since Mr. Colbert's death?

A. Well, it has been, it has always been, it has been among my papers.

Q. And did you give that to me last night?

A. Yes.

Q. At whose request was this drawn up, do you know? A. Lou Colbert's.

Q. And were you present at the time it was drawn up? A. Yes.

Q. Who drew it up?

A. I am not sure who. I am not sure. We went

Appellants Exhibit A-1—(Continued)

(Testimony of Mrs. Hayes.)

to so many different lawyers for so many different things.

Q. Could it have been Mr. Johnson?

A. Yes, it was Mr. Johnson.

Mr. McCarrey: May we have this in evidence as plaintiff's exhibit—petitioner's exhibit?

Mr. Hurley: No objection.

Mr. McCarrey: At this time, your Honor, I would like to for the sake of the record—I think the evidence shows what it is. It's a renewal of a chattel mortgage. I would like to point out that on the back page [191] this shows that it was signed by L. D. Colbert and "subscribed and sworn to by me this 18th day of September, 1945" and signed Maurice T. Johnson, notary public for the Territory of Alaska and it has his notarial seal affixed thereto, 1945.

Mr. Hurley: Let me see that. I have no objection. I just want to see it.

(Document shown to Mr. Hurley.)

The Court: Marked Petitioner's Exhibit "M."

(Chattel mortgage previously marked Petitioner's exhibit 13 for identification received and marked Petitioner's Exhibit "M" in evidence.)

Q. (By Mr. McCarrey): I hand you this piece of paper and ask you if you know what that is?

Mr. Hurley: Was that recorded, that renewal?

Appellants Exhibit A-1—(Continued)
(Testimony of Mrs. Hayes.)

I forgot to look. Could you look to see if it was recorded?

The Court: No.

A. This is a contract and agreement between Mr. Colbert and I for the Allison judgment.

Q. Who drew that up, if you know?

A. Mr. Hurley.

Q. At whose request was it prepared?

A. At Lou Colbert's.

Q. Did Mr. Colbert ask you to sign this?

A. Yes. [192]

Q. Is your signature appear thereon?

A. Yes. I am quite sure it is. Yes, it is.

Q. And did you sign it the same time that Mr. Colbert did? A. Yes.

Mr. McCarrey: We offer this in evidence.

Mr. Hurley: No objection.

(Contract and agreement, dated September 23, 1946, was received and admitted into evidence and marked Petitioner's Exhibit "N.")

Mr. Hurley: This is a contract and agreement. I thought you said it was the assignment of the Allison judgment?

Mr. McCarrey: No, it is a contract. It amounts to the same thing.

Mr. Hurley: I have no objection.

Mr. McCarrey (Continuing): Made and entered into this 23rd day of September, 1946, by and between L. D. Colbert of Fairbanks, Alaska, first

Appellants Exhibit A-1—(Continued)

(Testimony of Mrs. Hayes.)

party and Thelma D. Hayes of the same place, second party. And it is signed by—witnessed by—signed by L. D. Colbert and Thelma D. Hayes and witnessed by Julien A. Hurley and Peggy Lyle and acknowledgement taken by Julien A. Hurley on the 23rd day of September, 1946.

Q. (By Mr. McCarrey): Now, I will ask you, Mrs. Hayes, whether or not Mr. [193] Colbert and Mr. Stroeker ever had any words of difference?

A. They had many words of difference during the several years I knew them.

Q. How do you know they had words of difference?

A. I was in there different times with them and every time I would go with Lou Colbert to get a loan, he would go to get the money at the bank and Stroeker would have an argument with him about it.

Q. Did you hear Mr. Stroeker testify that they had a conversation at one time with reference to a renewal of a chattel mortgage? A. Yes.

Q. Do you recall what year that was that Mr. Stroeker said that Mr. Colbert didn't know about a chattel mortgage? A. Beg your pardon?

Q. Do you recall what year that was?

A. Renewal of the chattel mortgage?

Q. Yes. The conversation that he referred to?

A. Well—that was in 1946.

Q. And did Mr. Stroeker and Mr. Colbert have any words of difference in your presence during the year 1946? A. Yes, they did.

Appellants Exhibit A-1—(Continued)
(Testimony of Mrs. Hayes.)

Q. Will you tell the approximate date, if you recall?

A. Around Christmas, week between Christmas and New Years in 1946. Lou Colbert went down to the bank to see about the [194] will, why they wouldn't give me the will that he had sent me to get when I had a power of attorney and, oh, he brought up several other things why Stroeker should should have entered into such a dirty trick to him while he was in the hospital.

Q. What dirty trick?

A. Well, they filed—sent those papers to him as soon as he went to the hospital.

Q. Do you know whether or not Mr. Colbert ever asked Mr. Stroeker for his other will that he had there?

A. Yes, he asked him for it.

Q. In your presence?

A. Yes.

Q. And in the presence of Mr. Stroeker?

A. Yes.

Q. And what did Mr. Stroeker say?

A. He said——

Mr. Hurley: Well, now, we object to this, if the Court please.

A. He said——

Mr. McCarrey: Your Honor——

Mr. Hurley: This is not rebuttal or anything of the kind that I can see. Mr. Stroeker wasn't asked anything about that, whether he came in there in December of 1946 to the bank——

The Court: Objection sustained. [195]

Appellants Exhibit A-1—(Continued)

(Testimony of Mrs. Hayes.)

Mr. Hurley: —all this testimony be stricken out. If it don't, I will have to call Mr. Stroeker back and ask him if there was anything of that kind.

Mr. McCarrey: What's the ruling, if the Court please?

The Court: Objection sustained.

Mr. McCarrey: Very well. That's all.

Mr. Hurley: That's all.

Mr. McCarrey: Your Honor, petitioner rests as far as rebuttal is concerned.

Mr. Hurley: We rest, your Honor.

Mr. McCarrey: Mr. Hurley has suggested that no argument be had to your Honor.

Mr. Hurley: I said I would be willing to waive argument if you were.

Mr. McCarrey: Well, that's your statement that you made to me. Does the court have any pleasure in that respect?

The Court: The arguments may be waived. The Court will take this matter under advisement until 2 o'clock on Tuesday, June the 20th.

Mr. McCarrey: Your Honor, I will not be here at that time. Will you see that I am properly advised as to——

The Court: Yes, I will see that you are [196] properly advised.

Mr. McCarrey: Very well.

The Court: That's all.

(Off the record discussion.)

Appellants Exhibit A-1—(Continued)

The Court: You can have until 10 o'clock on the 28th. That would be——

Mr. McCarrey: Would you just read into the record that counsel requested the opportunity to submit briefs?

Mr. Hurley: The petitioner should have until 10 o'clock on the 28th of June and the bank shall have 10 days thereafter.

The Court: Ten days thereafter.

Mr. Hurley: In which to file authorities.

Mr. McCarrey: Very well.

Mr. Hurley: Whatever they want to.

Mr. McCarrey: Very well, thank you. [197]

(Court adjourned 5:35 p.m. June 16th, 1950.)

Reporter's Certificate

I, Charles Belida, the duly appointed court stenographer in and for the above-named court do hereby certify as follows, to wit:

That on the 16th day of June, 1950, I was the official court stenographer in and for the above-mentioned court; that upon the request of Mr. J. L. McCarrey, counsel for petitioner in the above-named cause, I reported in shorthand all of the oral proceedings had on the 16th day of June, 1950, in the Probate Court, Fairbanks, Alaska, before the Hon. Clinton B. Stewart, U. S. Commissioner; that the foregoing 197 pages constitute a full, true, complete and accurate transcript of all of my shorthand notes taken at said trial on the 16th day of June, 1950.

Appellants Exhibit A-1—(Continued)

Dated at Fairbanks, Alaska, this 5th day of September, 1950.

/s/ CHARLES BELIDA,
Official Court Reporter.

Subscribed to and sworn to before me this 5th day of September, 1950.

[Seal] /s/ JOHN B. HALL,
Clerk of Court, Notary Public in and for the Territory of Alaska.

APPELLANT'S EXHIBIT A

In the Probate Court for Fairbanks Precinct,
Fourth Judicial Division, Territory of Alaska

No. 1114

In the Matter of
The GUARDIANSHIP of LOUIS D. COLBERT,
an incompetent person.

JUDGMENT

Now, on this 15th day of November, 1946, this cause having come on regularly to be heard, before me as United States Commissioner and Ex-Officio Probate Judge of the above-entitled Court, and it appearing from the records and files herein that the Petition of the First National Bank of Fairbanks, Alaska, for the appointment of it as guardian to take care, custody, and management of the Estate

Appellant's Exhibit A (Continued)

of Louis D. Colbert, an incompetent person, and service of said petition having been made by personal service upon the said Louis D. Colbert by delivery of a copy of said Petition together with a copy of the Citation and Notice of Hearing of Application for Appointment of a Guardian of an Incompetent Person on the 23d day of October, 1946, and it further appearing that on the 6th day of November, 1946, Charles J. Clasby, an attorney of Fairbanks, Alaska, appeared for the purpose of asking a continuance of the hearing of said cause, which had heretofore been set on the 6th day of November, 1946, which said continuance was granted so that the said Louis D. Colbert could employ an attorney to represent him if so desired. And the said Louis D. Colbert after said continuance was granted and after the service of said Petition and service of said Citation and Notice of Hearing of Application for Appointment of a Guardian of an Incompetent Person upon him failed to appear, either in person or by attorney, and that thereupon witnesses were called, examined by attorney for Petitioner, and by the Court, which said witnesses included Dr. Arthur J. Schaible, doctor for the said Louis D. Colbert, Charles Lindgren, a member of the Pioneer's Lodge and a friend of the said Louis D. Colbert, and Frank DeWree, as Trust Officer and Petitioner for the First National Bank of Fairbanks, Alaska, and Julien A. Hurley, attorney for the said Louis D. Colbert in cases on file in the District Court for the Territory of Alaska, Fourth

Appellant's Exhibit A (Continued)

Division, and the Court having heard the testimony of the witnesses, and established its findings of fact and conclusions of law herein, and ordered judgment in accordance therewith;

Now, Therefore, it is Ordered, Adjudged and Decreed that the First National Bank of Fairbanks, Alaska, be, and is hereby, appointed the Guardian of the said Louis D. Colbert to take care, custody and management of the real estate and personal property of the said Louis D. Colbert, who is incompetent of conducting his own affairs, and the said First National Bank of Fairbanks, Alaska, shall qualify as such guardian in accordance with law and shall conduct itself in accordance with the law and the orders of this Court, and to be effective upon qualification as required by law. Guardian to furnish bond in the amount of \$5,000.00

Done at Fairbanks, Alaska, on this 15th day of November, 1946.

[Seal] /s/ ELEANOR M. ELY,
United States Commissioner and Ex-Officio Probate
Judge.

[Endorsed]: Filed November 19, 1946.

Entered in Court Journal No. 19, page 112.

Appellant's Exhibit A (Continued)

In the Probate Court for Fairbanks Precinct,
Fourth Judicial Division, Territory of Alaska

No. 1114

In the Matter of
The GUARDIANSHIP of LOUIS D. COLBERT,
an Incompetent Person.

FINDINGS OF FACT AND CONCLUSIONS
OF LAW

This cause coming on regularly to be heard on this 15th day of November, 1946, before me as United States Commissioner and Ex-Officio Probate Judge of the above-entitled Court, and it appearing from the records and files herein that the Petition of the First National Bank of Fairbanks, Alaska, for the appointment of it as guardian to take care, custody and management of the Estate of Louis D. Colbert, an incompetent person, and service of said petition having been made by personal service upon the said Louis D. Colbert by delivery of a copy of said Petition together with a copy of the Citation and Notice of Hearing of Application for Appointment of a Guardian of an Incompetent Person on the 23d day of October, 1946, and it further appearing that on the 6th day of November, 1946, Charles J. Clasby, an attorney of Fairbanks, Alaska, appeared for the purpose of asking a continuance of the hearing of said cause, which had heretofore been set on the 6th day of November, 1946, which said continuance was granted so that the said Louis D. Colbert could

Appellant's Exhibit A (Continued)

employ an attorney to represent him if so desired. And the said Louis D. Colbert after said continuance was granted and after the service of said Petition and service of said Citation and Notice of Hearing of Application for Appointment of a Guardian of an Incompetent Person upon him failed to appear, either in person or by attorney, and that thereupon witnesses were called, examined by attorney for Petitioner, and by the Court, which said witnesses included Dr. Arthur J. Schaible, doctor for said Louis D. Colbert, Charles Lindgren, a member of the Pioneer's Lodge and a friend of the said Louis D. Colbert, and Frank DeWree, as Trust Officer and Petitioner for the First National Bank of Fairbanks, Alaska, and Julien A. Hurley, attorney for the said Louis D. Colbert in cases on file in the District Court for the Territory of Alaska, Fourth Division, all of which said witnesses testified as to the mental condition of the said Louis D. Colbert and the necessity of appointing a guardian to manage and take care of the affairs of the said Louis D. Colbert as an incompetent person. And the said Court after hearing the evidence introduced in this action in support of the Petition filed herein, and after considering the same, does now make and establish the following as its Findings of Fact herein.

I.

That your petitioner is a banking corporation doing business in Fairbanks, Alaska, and is qualified and competent under the law to act as guardian to take care, custody and management of the estate,

Appellant's Exhibit A (Continued)

real and personal property, of the above-named Louis D. Colbert, who is incapable of conducting his own affairs.

II.

That the said Louis D. Colbert is about 70 years of age and has property, both real and personal, in Fairbanks Precinct, Fourth Division, Territory of Alaska, which needs care and attention, the exact nature and description of which is to your petitioner unknown.

III.

That the said Louis D. Colbert has by reason of illness (arteriosclerotic dementia) become mentally incompetent and incapable either to care for himself or of conducting his own affairs or to manage his property.

IV.

That it appears from the evidence that the said Louis D. Colbert is incompetent mentally to attend his own affairs and that he has property which must be protected and which cannot be protected by himself, and in order to protect him and his heirs that a guardian should be appointed for him, and that the First National Bank of Fairbanks, Alaska is a proper corporation to represent him.

And, from the foregoing Findings of Fact, the Court does now make and establish the following as its Conclusions of Law herein, to-wit:

Conclusions of Law

I.

That the said Louis D. Colbert is mentally in-

Appellant's Exhibit A (Continued)

competent to care for himself or to conduct his business affairs.

II.

That a guardian should be appointed, and that the First National Bank of Fairbanks, Alaska, is a proper corporation to be appointed for said purpose.

Let Judgment enter accordingly.

Dated at Fairbanks, Alaska, this 15th day of November, 1946.

[Seal] /s/ ELEANOR M. ELY,
United States Commissioner and Ex-Officio Probate
Judge.

Entered in Court Journal, No, 19, Page 111.

[Endorsed]: Filed Nov. 19, 1946.

In the Probate Court for Fairbanks Precinct,
Fourth Judicial Division, Territory of Alaska

No. 1114

In the Matter of
The GUARDIANSHIP of LOUIS D. COLBERT,
an Incompetent Person.

MOTION FOR CONTINUANCE

Comes Now, Chas. J. Clasby on behalf of Louis D. Colbert, for the purpose of this Motion only, and respectfully moves the Court for an Order granting continuance on the hearing in this case for a suffi-

Appellant's Exhibit A (Continued)

cient time to enable the said Louis D. Colbert to secure the assistance of council.

This Motion is based upon the records and files herein and the Affidavit of Chas. J. Clasby attached hereto.

/s/ CHAS. J. CLASBY.

United States of America,
Territory of Alaska—ss.

Chas. J. Clasby, being first sworn on oath deposes and says:

Prior to the 29th day of October, 1946, Louis D. Colbert, by correspondence, asked Mr. E. B. Collins to act as his Council in matter referred to in the Motion to which this Affidavit is attached. That Mr. Collins was unable to act for Mr. Colbert for the reason set forth in his letter of October 29, 1946, to Mr. Colbert, a copy of which is attached to this Affidavit.

That on the 5th day of October, 1946, at about 5:15 p.m., it was brought to Affiant's attention by virtue of the letters and the envelopes attached to this original Affidavit, and copies attached to the copies of this Affidavit, that the said Louis D. Colbert was depending upon Affiant to appear in this proceeding for him. By reason of other commitments to other clients, it is impossible for Affiant to properly prepare and present a defense for said Louis D. Colbert; and that Affiant was not informed of Mr. Louis D. Colbert's wishes in sufficient time

Appellant's Exhibit A (Continued)

to so advise Mr. Louis D. Colbert so that he could secure the services of other Council.

The Affiant, from conversations with Mr. Collins and other attorneys, is slightly familiar with the issues in this case and from such familiarity states that the issues are such that will require considerable preparation by an attorney in order to adequately present a defense for the said Louis D. Colbert; and that this Court should grant a continuance of not less than ten days in order to enable Mr. Colbert to prepare his defense in said action.

/s/ CHAS. J. CLASBY.

Subscribed and sworn to before me this 6th day of November, 1946.

[Seal] /s/ MYRTLE L. BOWERS,

Notary Public, In and for the
Territory of Alaska.

My commission expires: 6/10/50.

October 29, 1946

(Copy)

Mr. L. D. Colbert
c/o St. Joseph's Hospital
Fairbanks, Alaska

Dear Mr. Colbert:

I received your letter requesting that I represent you at the hearing on November 6, 1946.

It will be impossible for me to represent you for

Appellant's Exhibit A (Continued)

the reason that I have been ill for the past several weeks and have not been able to attend to very many of the office affairs, and have been advised by the Doctor that it is necessary for me to leave for Seattle for medical attention. With that in view I am now awaiting for the first available transportation by plane. Therefore, I will be unable to be of service to you.

Yours very truly,

E. B. COLLINS.

EBC;mb

[Envelope.]

[U. S. 2 cent stamp.]

[Postmark]: Fairbanks, Alaska, 4 p.m., Oct. 31, 1946.

[Addressee]: Mrs. Thelma Hayes

Graehl Circle Bar
Fairbanks, Alaska

Thelma

The Sister Superior has forbidden me to use the phone. Is everything O.K.

They will try the suit Friday unless Clasby stops me.

As I can't phone I am leaving the lawsuit to you. I tried to get out of here and they stopped me.

Appellant's Exhibit A (Continued)

If Clasby tells me I can go after the suit I'll come over.

LOU.

Bring answer yourself or send it personally.
Room 225.

[Envelope]

[Addressee]: Collins & Clasby
Fairbanks, Alaska

[No stamp or postmark]

Hospital,
Oct. 24

they, will try me on Nov. 6 for Insanity. I want you to be my lawyer, Hurley is the prosecutor and is after my property.

I got notice yesterday from the Marshall Office.

As Thelma is looking after my papers you can look them over. It is hard to telephone from the Hospital so I take this way of writing you, I have been sick over a month *rhuetmatism*, and it has turned to mental affliction so Dr. Schaible says to find me *same*, which I can show.

I will see you as soon as I can. Thelma has charge of my papers. Very truly L. D. Colbert

Appellant's Exhibit A (Continued)

L. D. Colbert

Box 1356

Fairbanks Alaska

Clinic

Oct. 24, '46

Thelma

They will try me on Nov. 6, tell Mr. Clasby, and get him to take my case.

I can't phone from here. Let me hear from you.

Yours,

LOU.

[Endorsed]: Filed Nov. 6, 1946.

In the Probate Court for Fairbanks Precinct,
Fourth Judicial Division, Territory of Alaska

No. 1114

In the Matter of
The GUARDIANSHIP of LOUIS D. COLBERT,
an Incompetent Person.

PETITION FOR APPOINTMENT OF GUARD-
IAN TO TAKE CARE, CUSTODY, AND
MANAGEMENT OF THE ESTATE OF
LOUIS D. COLBERT, AN INCOMPETENT
AND INCAPABLE PERSON

To the Honorable Eleanor M. Ely, Judge of the
Above entitled Court,

The petitioner, The First National Bank of Fair-
banks, Alaska, a corporation organized and existing

Appellant's Exhibit A (Continued)

under and by virtue of the laws of the United States, by and through its Trust Officer, Frank P. DeWree, respectfully shows:

I.

That your petitioner is a banking corporation doing business in Fairbanks, Alaska and is qualified and competent under the law to act as guardian to take care, custody and management of the estate, real and personal property, of the above-named Louis D. Colbert, who is incapable of conducting his own affairs.

II.

That the said Louis D. Colbert is about 67 years of age and has property, both real and personal, in Fairbanks Precinct, Fourth Division, Territory of Alaska, which needs care and attention, the exact nature and description of which is to your petitioner unknown.

III.

That the said Louis D. Colbert has by reason of illness (arteriosclerotic dementia) become mentally incompetent and incapable either to care for himself or of conducting his own affairs or to manage his property.

Wherefore, your petitioner prays that it be appointed guardian to take care, custody and management of the estate, and of the real and personal property of the said Louis D. Colbert, and that a time be set for hearing this petition and that upon such hearing and the proofs to be adduced thereat

Appellant's Exhibit A (Continued)
that Letters of Guardianship of said estate may be
issued to your petitioner.

FIRST NATIONAL BANK
OF FAIRBANKS,
ALASKA,

/s/ FRANK P. DeWREE,
Trust Officer.

/s/ JULIEN A. HURLEY,
Attorney for Petitioner.

United States of America,
Territory of Alaska—ss.

I, Frank P. DeWree, being first duly sworn upon
oath, depose and say:

I am the Trust Officer of the First National Bank
of Fairbanks, Alaska; that I have read the fore-
going Petition for Appointment of Guardian, know
the contents thereof and that the matter and things
therein stated are true, as I verily believe.

/s/ FRANK P. DeWREE,

Subscribed and sworn to before me this 23d day
of October, 1946.

[Seal] /s/ JULIEN A. HURLEY,
Notary Public in and
For the Territory of Alaska.

My Commission expires June 12, 1949.

[Endorsed]: Filed Oct. 23, 1946.

APPELLANT'S EXHIBIT B

In the Probate Court for the Fairbanks Precinct,
Fourth Division, Territory of Alaska

No. 1141

In the Matter of
The Estate of LOUIS D. COLBERT, also known
as L. D. COLBERT, Deceased

FIRST NATIONAL BANK, Executor

LETTERS TESTAMENTARY

United States of America,
Territory of Alaska,
Fairbanks Precinct—ss.

To All Persons To Whom These Presents Shall
Come, Greeting:

Know Ye, That the Will of Louis D. Colbert, also known as L. D. Colbert, Deceased, a copy of which is hereto annexed, has been duly proven before the Commissioner for the Precinct aforesaid, and that the First National Bank, of Fairbanks, Alaska, who is named in said Will as Executor, has been duly appointed such Executor by the Commissioner aforesaid. This, therefore, authorizes the said First National Bank, to administer the estate of the said Louis D. Colbert, also known as L. D. Colbert, deceased, according to law.

In Testimony Whereof, I have hereunto sub-

scribed my name and affixed the seal of this Court this 27th day of May, 1947.

[Seal] /s/ EVERETT E. SMITH,
United States Commissioner and Ex-officio Probate
Judge in and for the Fairbanks Precinct,
Fourth Division, Territory of Alaska.

WILL

Know All Men By These Presents That I, Louis D. Colbert, of Fairbanks, Alaska, Territory of Alaska, and being of sound and disposing mind and memory, not acting by reason of fraud, duress, menace, or undue influence of any character whatsoever, do hereby make, publish, and declare this to be my Last Will and Testament, hereby revoking any and all former wills by me made.

1. It is my will that my just debts and the charges of my funeral be paid as soon as can conveniently be done after my decease, and I leave the charge of my funeral arrangements to the direction of my executor hereinafter named.

2. After all my just debts are paid and the expenses of administration, I give, devise, and bequeath my estate as follows:

(a) The sum of One Thousand Dollars (\$1000.00) to the Pioneers of Alaska, Igloo No. 4, Fairbanks, Alaska.

(b) The sum of One Thousand Dollars (\$1,000.00) to my niece, Eleanor Colbert, residing in Elkhart, Indiana.

(c) All the rest and residue of my estate,

both real and personal, to my sister Emma Colbert, residing at East 23rd Street, Indianapolis, Indiana.

3. I do hereby nominate, constitute, and appoint the First National Bank of Fairbanks, Alaska, the executor of this my Last Will and Testament.

In Witness Whereof, I, Louis D. Colbert, the testator above named, have to this my Last Will and Testament, hereunto subscribed my name in the presence of witnesses, on this, the fourteenth day of November, A. D. one thousand nine hundred thirty eight.

/s/ LOUIS D. COLBERT.

Attestation

The foregoing instrument, consisting of two (2) pages of typewritten matter, including the page signed by the testator, was, at the date thereof, by the said Louis D. Colbert, the maker thereof, signed in our presence and in the presence of each of us and at the time of his subscribing of said instrument he declared that it was his will and at his request and in his presence and in the presence of each other we have subscribed our named as witness thereto.

/s/ BARBARA WOODWARD,
Residing at Fairbanks,
Alaska.

/s/ ALBERT C. VISCA,
Residing at Fairbanks,
Alaska.

APPELLANT'S EXHIBIT C

LAST WILL AND TESTAMENT OF

LOUIS D. COLBERT

Know All Men By These Presents, that I, Louis D. Colbert, of Fairbanks, Alaska, being of lawful age and of disposing mind and memory, and not acting under duress, fraud, menace or the undue influence of any persons or person whomsoever, do make, publish and declare this to be my Last Will and Testament in the manner following:

1. I direct that the expense of my last illness and burial be paid as soon as can conveniently be done, as well as all my other just obligations.

2. I hereby bequeath unto Thelma Gregor Hayes, of Fairbanks, Alaska, all my property, real, personal and mixed, wheresoever situate, and of every kind and nature, of which I may die possessed, or to which I am entitled at the time of my death, to be and become her sole and separate property; provided however, the said Thelma Gregor Hayes shall pay to my sister Emma Colbert, the sum of One Thousand (\$1000.00) Dollars; also providing that the said Thelma Gregor Hayes convey certain portions of property now possessed by me to such persons as may be designated by me prior to my passing away.

3. I hereby appoint Thelma Gregor Hayes, to be the executor of this, my last will and testament; and I further direct that the probate of my estate be carried out without the intervention of any court

or court whatsoever, except as may be required by law.

4. I hereby revoke any and all wills heretofore by me made.

In Witness Whereof, I have hereunto set my hand this 22nd day of October, 1946.

/s/ L. D. COLBERT.

In the Presence of:

/s/ JAMES F. HAYNES,

/s/ ARTHUR A. BENZ,

/s/ V. A. COBELL.

Attestation of Witnesses

We, the undersigned, whose names are subscribed as witnesses to the foregoing instrument, do hereby certify that the said instrument, consisting of one page besides this page, was on the date hereof signed and subscribed to by Louis D. Colbert in our presence, and in the presence of each of us, and the said Louis D. Colbert then and there declared and published the said instrument to be his last will and testament, and we, at his request, and in his presence, and in the presence of each other have subscribed our names as witnesses thereto.

Dated this 22nd day of October, 1946.

/s/ JAMES F. HAYNES,
Residing at Fairbanks,
Alaska.

/s/ ARTHUR A. BENZ,
Residing at Fairbanks,
Alaska.

/s/ V. A. COBELL.

[Endorsed]: Filed June 11, 1947.

APPELLANTS EXHIBIT D

LAST WILL AND TESTAMENT OF LOUIS
D. COLBERT

Know All Men By These Presents, that I, Louis D. Colbert, of Fairbanks, Alaska, being of lawful age and of disposing mind and memory, and not acting under duress, fraud, menace or the undue influence of any persons or person whomsoever, do make, publish and declare this to be my last will and testament in the manner following:

I.

1. I direct that the expenses of my last illness and burial be paid as soon as can conveniently be done, as well as all my other just obligations.

2. I hereby bequeath unto Thelma Gregor Hayes, of Fairbanks, Alaska, all my property, real, personal and mixed, wheresoever situate, and of every

kind and nature, of which I may die possessed, or to which I am entitled at the time of my death, to be and become her sole and separate property; provided however, the said Thelma Gregor Hayes shall pay to my sister, Emma Colbert, of Indianapolis, Indiana, the sum of \$25.00 per month so long as my said sister shall live, the same to be paid out of the income or principal of my estate. *Providing certain portions of property be willed to if any persons listed by me to Thelma Gregor Hayes at later time.**

3. I hereby appoint Thelma Gregor Hayes, to be the executor of this, my last will and testament; and I further direct that the probate of my estate be carried out without the intervention of any court or courts whatsoever, except as may be required by law.

4. I hereby revoke any and all wills heretofore by me made.

In Witness Whereof, I have hereunto set my hand this 22nd day of October, 1946.

/s/ L. D. COLBERT.

Attestation

We, the undersigned, whose names are subscribed as witnesses to the foregoing instrument, do hereby certify that the said instrument, consisting of one page besides this page, was on the date hereof

*Matter appearing in italic is in longhand in ink and initialed L.D.C. on original.

signed and subscribed to by Louis D. Colbert in our presence, and in the presence of each of us, and the said Louis D. Colbert then and there declared and published the said instrument to be his last will and testament, and we, at his request, and in his presence, and in the presence of each other have subscribed our names as witnesses thereto.

Dated this 22nd day of October, 1946.

/s/ V. A. COBELL,
Residing at Fairbanks,
Alaska.

/s/ ARTHUR A. BENZ,
Residing at Fairbanks,
Alaska.

6/16/50.

APPELLANT'S EXHIBIT E

Power of Attorney

Know All Men By These Presents: That I, Louis Colbert of Fairbanks, Alaska, have made, constituted and appointed, and by these presents do make, appoint and constitute Thelma Hayes, of Fairbanks, Alaska, my true and lawful attorney for me and in my name to take charge of all of my property; to purchase and sell, either for cash or on credit, all such articles and property as she may deem useful and proper as connected with said property; to draw, accept, make and endorse bills of exchange, checks, and promissory notes; to state accounts; to

sue and prosecute, collect, compromise, or settle all claims or demands due or to become due, now existing or hereafter to arise in my favor, and to adjust, settle, and pay all claims and demands which now exist against me or may hereafter arise, either as connected with my property or otherwise; to take the general management and control of my affairs, property and business and therein to buy, sell, pledge or mortgage, and to execute and enter into bonds, contracts, mortgages, and deeds connected therewith; and in general to do all acts and things which she may consider useful or necessary connected with my business, property and interest.

Hereby Ratifying and Confirming all that my said attorney shall do or cause to be done by virtue of these presents.

In Witness Whereof, I have hereunto set my hand this 7th day of October, 1946.

/s/ LOUIS D. COLBERT.

United States of America,
Territory of Alaska—ss.

This is to Certify that before me, the undersigned, a Notary Public in and for the Terirtory of Alaska, duly commissioned and sworn, personally appeared Louis Colbert, to me personally known and known to me to be the identical person who executed the above and foregoing instrument and he acknowledged to me that he executed the same freely and voluntarily and for the purposes therein mentioned.

In Witness Whereof, I have hereunto set my hand and affixed my official seal this 17th day of October, 1946.

[Seal] /s/ WARREN A. TAYLOR,
Notary Public for Alaska.

My Commission expires 8/11/49.

No. 102,341

Territory of Alaska,
Fourth Judicial District—ss.

Filed for record at request of Thelma Hayes on the 17 day of October, 1946, at 20 min. past 4 p.m. and recorded in Vol. 8 of Power/Atty., page 537, Fairbanks Recording District.

/s/ ELEANOR M. ELY,
Recorder.

6/16/50.

APPELLANT'S EXHIBIT F

Wm. Kelly Estate
Appraised Nov 5, 1942

Rec'd.

Real Estate

House and lot across road east of
Gilleam Hangar..... \$1200.00

Personal Property

	Cash First Nat'l Bank.....	1392.41
1506.43*	Cash Bank of Fairbanks.....	113.99
	Carpenter tools.....	35.00
	Gold watch.....	30.00
	Wages from U. S.....	412.00
462.00*	Vaughn note (214) settled at...	50.00
	9 months rent at 12.50	
303.00	per month.....	100.50

 2271.43

Oct. 7	Received from Social Security	
	Board Funeral Expense.....	141.06
Oct. 7	Rent Kelly cabins.....	25.00
Nov. 2	“ “ “	12.50
Dec. 2	“ “ “	12.50
Jan. 2	“ “ “	12.50

 2272.43

* [In margin on original.]

Feb.	2/44	Rent Kelly Cabins	12.50
Mar.	2	Rent Kelly cabins	12.50
Apr.	14	Rent Kelly cabins	12.50
May	4	Rent Kelly cabins	12.50
June	4	Rent Kelly cabins	12.50

6/16/50.

APPELLANT'S EXHIBIT G

Fairbanks, Alaska

October 23, 1946

Fairbanks Agency Co.

Fairbanks, Alaska

Dear Sirs:

This will authorize you to allow Thelma Hayes to have access to my safe deposit box in your place of business.

Very truly yours

/s/ L. D. COLBERT.

Witnessed by:

/s/ KENNETH D. WIRE,

/s/ ARTHUR A. BENZ.

6/16/50.

APPELLANT'S EXHIBIT H

[Check]

First National Bank of Fairbanks
59-7

No.2

Fairbanks, Alaska Sept. 28, 1946.

Pay to the order of: Cash.....\$ 10.00
..... Dollars

/s/ L. D. COLBERT

Address: Fairbanks

[Stamped]: Paid 9/28/46.

[Check]

First National Bank of Fairbanks
59-7

Fairbanks Alaska Sept. 26, 1946.

Pay to the order of: Corner Drug Store..\$ 1.25
One dollar and 25 cents.....Dollars

/s/ L. D. COLBERT

Address: Fairbanks

[Stamped]: Paid 9/27/46.

[Reverse]

Stamped: Pay to the order of Any Bank, Banker
or Trust Co. Endorsement Guaranteed
Corner Drug Store Fairbanks, Alaska

APPELLANT'S EXHIBIT H—(Continued)
[Check]First National Bank of Fairbanks
59-7

Fairbanks, Alaska Sept. 26, 1946.

Pay to the order of: L. D. Colbert.....\$ 1.60
One dollar and 60 cents.....Dollars

/s/ L. D. COLBERT

Address: Fairbanks

Stamped: Paid 9/27/46.

[Reverse]

[Endorsed]: /s/ L. D. COLBERT

Stamped: For Deposit First National Bank, Fairbanks, Alaska. The Model Cafe, John Klopfer, Mgr.

[Check]

First National Bank of Fairbanks
59-7

Fairbanks, Alaska Oct. 2, 1946.

Pay to the order of: Cash.....\$ 20.00
.....Dollars

/s/ L. D. COLBERT

Address: Fairbanks

[Stamped]: 10/2/46.

[Reverse]

[Stamped]: /s/ L. D. COLBERT

APPELLANT'S EXHIBIT H—(Continued)

[Counter Check]

First National Bank of Fairbanks

59-7

Fairbanks, Alaska Sept 2, 1946.

Pay to the order of Arctic Piggly Wiggly

Co.\$ 14.58

Fourteen Dollars and 58 cents.....Dollars

/s/ L. D. COLBERT

Address: Fairbanks

Closed Feb. '46.

[Stamped]: Paid 9/7/46.

[Reverse]

Stamped: Pay Bank of Fairbanks of Fairbanks,
Alaska, or Order Arctic Piggly Wiggly
Co.

[Stamped]: Pay to the Order of Any Bank or
Trust Co. All prior endorsements
guaranteed. Sep. 7, 1946. Bank of
Fairbanks, Alaska. 59-20.

[Counter Check]

First National Bank of Fairbanks

59-7

Fairbanks, Alaska Aug. 26, 1946.

Pay to the order of: Fairbanks Insurance Agency,
Fairbanks

Nineteen dollarsDollars

/s/ L. D. COLBERT

Address: Fairbanks

[Stamped]: Paid 8/31/46.

APPELLANT'S EXHIBIT H—(Continued)
[Reverse]

Stamped: Pay to the order of First National
Bank of Fairbanks, Alaska. For de-
posit Fairbanks Insurance Agency.

[Check]

First National Bank of Fairbanks
59-7

Fairbanks, Alaska, Oct. 10, 1946.

Pay to the order of Healey River Coal Co...\$ 14.16
Fourteen dollars and 16 cents.....Dollars

/s/ L. D. COLBERT

Address: Fairbanks

[Stamped]: Paid 9/12/46.

[Reverse]

Stamped: For deposit only to Bank of Fairbanks.
Sourdough Express. 59-20.

[Stamped]: Pay to the order of any Bank [il-
legible] Co. All prior endorsements
guaranteed. Sep. 12, 1946. Bank of
Fairbanks, Fairbanks, Alaska, 59-20.

[Check]

First National Bank of Fairbanks
59-7

Fairbanks, Alaska Aug. 1, 1946.

Pay to the order of L. D. Colbert.....\$ 26.69
Twenty six dollars and 69 cents.....Dollars

/s/ L. D. COLBERT

Address: Fairbanks

[Stamped]: Paid 8/3/46.

~ APPELLANT'S EXHIBIT H—(Continued)

[Reverse]

Stamped: Pay Bank of Fairbanks of Fairbanks,
Alaska, or order Arctic Piggly Wiggly
Co.

[Stamped]: Pay to the order of any Bank,
Banker or Trust Co. All prior en-
dorsements guaranteed. Aug. 3, 1946.
Bank of Fairbanks, Fairbanks, 59-20,
Alaska.

[Check]

First National Bank of Fairbanks
59-7

Fairbanks, Alaska Oct. 4, 1946.

Pay to the order of: W. R. Tucker.....\$ 12.00

Twelve dollars and no cents.....Dollars

/s/ L. D. COLBERT

Address: Fairbanks

[Stamped]: Paid 10/11/46.

[Reverse]

Stamped: Pay to the order of Any Bank or Trust
Co. All prior endorsements guaranteed.
Oct. 10, 1946. Bank of Fairbanks, 59-20,
Alaska.

APPELLANT'S EXHIBIT H—(Continued)
[COUNTER CHECK]

First National Bank of Fairbanks
59-7

Fairbanks, Alaska Sept. 24, 1946.

Pay to the order of: N. C. Co.....\$ 14.39
Fourteen dollars and 39 cents.....Dollars

/s/ L. D. COLBERT

Address: Fairbanks

[Stamped]: Paid 9/24/46.

[Reverse]

Stamped: Pay to the order of First National
Bank of Fairbanks, Alaska. All pre-
vious endorsements guaranteed for de-
posit only. Northern Commercial Com-
pany.

Statement of Account
The First National Bank
Fairbanks, Alaska

L. D. Colbert

Kindly Advice the Bank of Any Change in Address.

Please Examine at Once. If No Error Is Reported in Ten Days
the Account Will Be Considered Correct.

				The Last Amount in This Column	
Date	Checks in Detail	Date	Deposits	Is Your Balance	
	Balance Brought Forward	Sept. 23, 1946		930.21	
Sept. 25/46	14.39—			Sept. 25/46	915.82*
Sept. 27/46	1.25— 1.60—			Sept. 27/46	912.97*
Sept. 28/46	10.00—			Sept. 28/46	902.97*
Sept. 30/46	500.00—			Sept. 30/46	402.97*
		Oct. 1/46	75.00	Oct. 1/46	477.97*
Oct. 2/46	20.00—			Oct. 2/46	457.97*
Oct. 5/46	34.00—			Oct. 5/46	423.97*
Oct. 11/46	12.00—			Oct. 11/46	411.97*

[Stamped]: Your Balance Oct. 15, 1946.

This Statement is furnished you instead of balancing your Pass Book. It saves you the trouble of bringing your Pass Book to the bank and waiting for it to be balanced. These statements will be found very convenient to check up and file. All items are credited subject to final payment.

Use Your Pass Book Only as a Receipt Book
When Making Deposits.

APPELLANT'S EXHIBIT I

REAL MORTGAGE

This Indenture, Made this 1st day of December, 1943, by and between:

Thelma D. Gregor, of Fairbanks, Alaska,
party of the first party, hereinafter styled
mortgagor; and

L. D. Colbert, of the same place, party of the
second part, hereinafter styled mortgagee,

Witnesseth:

That the said party of the first part, for and in consideration of the sum of One Thousand Dollars (\$1000.00), lawful money of the United States of America, to her in hand paid by the party of the second part, the receipt whereof is hereby acknowledged, does by these presents grant, bargain, sell, convey, and confirm unto the said party of the second part, and to his heirs and assigns, forever, all the following-described real property, to-wit:

The south one-hundred thirty-seven (137) feet of Lot eighteen (18) in Block Two (2) of the Graehl Townsite in the Fairbanks Recording Precinct, Fourth Judicial Division, Territory of Alaska, according to the official map and plat of said Graehl Townsite.

The foregoing mortgage is intended as a mortgage to secure the payment by mortgagor to mortgagee on or before the 25th day of October, 1944, the sum of \$1000.00, together with the interest thereon at the rate of eight per cent (8) per annum, according to the terms and conditions of a certain promissory note of even date herewith in the words and figures following, to wit:

“Installment Note

\$1000.00

Fairbanks, Alaska, December 1, 1943

For value received, I promise to pay to the order of L. D. Colbert of Fairbanks, Alaska, one-thousand Dollars in Lawful Money of the United States of America, with interest thereon in like Lawful

Money at the rate of eight per cent per annum from date until paid, payable in monthly installments of not less than \$100.00 in any one payment, together with the full amount of interest due on this note at time of payment of each installment. The first payment to be made on the 25th day of January, 1944, and a like payment on the 25th day of each month thereafter until the whole sum, principal and interest to become immediately due and collectible at the option of the holder hereof. And in case suit or action is instituted to collect this note, or any portion thereof, I promise to pay such additional sum as the Court may adjudge reasonable as attorney's fees in said suit or action.

Due October 25, 1944, at Fairbanks, Alaska.

THELMA D. GREGOR."

This mortgage is also intended to secure, and does hereby secure, the payment of all liens, encumbrances, charges, and counsel fees herein mentioned, said counsel fees to become payable and be allowed if suit be commenced to foreclose this mortgage, and these presents shall be void of such payments be made according to the tenor and effect thereof; but, in case default be made in the payment of said principal sum or interest as hereinbefore provided, at the option of the said party of the second part, or his heirs or assigns, suit may be immediately brought and a decree be had to sell said premises, with each and every of the appurtenances, or any part thereof, in the manner prescribed by law; and out of the money arising from such sale, the prin-

principal and interest shall be retained by mortgage, together with the costs and charges of making such sale and of suit for foreclosure, including attorney's fees, and also the amounts, both principal and interest shall be retained by mortgages, together with the costs and charges of making such sale and suit for foreclosure, including attorney's fees, and also the amounts, both principal and interest, of all payments of liens and other encumbrances that may have been made by the said mortgagee by reason of the permission hereinafter granted; and the surplus, if any there be, shall be paid by the party making such sale, on demand, to the mortgagor herein, her heirs, executors, administrators, or assigns.

It is hereby agreed that the said party of the second part, or his heirs or assigns, may pay and discharge at maturity any and all liens and other encumbrances now subsisting, or hereinafter to be laid or imposed on said parcel of land and premises, excepting for taxes and other assessments levied or assessed on this mortgage or on the money secured hereby, and which may be in effect a charge thereon, and all such payments and interest shall be allowed with interest at the rate of eight per cent per annum, and such payments and interest shall be considered to be secured by these presents, and shall be a charge on said premises, payable on demand in the same money or currency in which the same may have been paid and may be deducted from the proceeds of the sale hereinabove authorized.

The terms and conditions of this mortgage shall

be binding on the said party of the first part, her heirs, executors, administrators, successors in interest, and assigns.

In Witness Whereof, the party of the first part has hereunto set her hand and seal the day and year first above written.

[Seal] /s/ THELMA D. GREGOR.

In the presence of:

/s/ JUNE BROWN,

/s/ E. B. COLLINS.

United States of America,
Territory of Alaska—ss.

This Is To Certify That on this the 1st day of December, 1943, the undersigned, a notary public in and for the Territory of Alaska, duly commissioned and sworn, personally appeared Thelma D. Gregor, to me known to be the identical individual mentioned in and who executed the within and foregoing mortgage, and she acknowledged to me that she signed and sealed the same freely and voluntarily for the uses and purposes therein specified.

Witness my hand and notarial seal the day and year in this certificate first written.

[Seal] /s/ E. B. COLLINS,

Notary Public in and for the
Territory of Alaska.

My Commission expires November 23, 1947.

Territory of Alaska,
Fourth Judicial Division—ss.

Filed for record at request of L. D. Colbert on the 4 day of Dec., 1943 at 42 min. past 11 a.m. and recorded in Vol. 13 of Real Mtg., page 393. Fairbanks Recording District.

/s/ ELEANOR M. ELY,
Recorder.

By /s/ FRANCIS P. BAKER,
Deputy.

6/16/50.

APPELLANT'S EXHIBIT J
REAL ESTATE MORTGAGE

This Indenture, made and entered into this 22nd day of January, 1946, by and between Thelma Gregor Hayes, of Fairbanks, Alaska, party of the first part, and L. D. Colbert, of Fairbanks, Alaska, party of the second part,

Witnesseth:

That the said party of the first part, for and in consideration of the sum of Eighteen Hundred (\$1800.00) Dollars, to her in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, do by these presents grant, bargain, sell, convey, release and quitclaim unto the said party of the second part, his successors and assigns, all her right, title and interest, claim and demand, both at law and in equity, as well in possession as in expectancy if the said party of the first

part, of, in and to the following described property situate in the town of Fairbanks, Fourth Division, Territory of Alaska, to wit: *T.D.H Graehl.**

All of Lot Nine (9) and the South Fifty (50) feet of Lot Six (6) in Block Three (3)

together with all and singular the tenement, hereditaments, and appurtenances thereunto belonging or in anywise appertaining, and the rents, issues and profits thereof.

To Have and to Hold, all and singular, the said premises, together with the appurtenances, unto the said party of the second part and to his successors and assigns forever.

This conveyance is intended as a mortgage to secure the payment of the sum of Eighteen Hundred (\$1800.00) Dollars, in accordance with the words and tenor of a certain promissory note of even date hereof, in the words and figures as follows:

\$1800.00 January 22, 1946. On or before one year after date, without grace I promise to pay to the order of L. D. Colbert, Eighteen Hundred Dollars, for value received with interest from date at the rate of eight per cent per annum until paid. Principal and interest payable in lawful money of the United States at Fairbanks Alaska, and in case suit is instituted to collect this note or any portion thereof, I promise to pay such additional sum as the

[*In longhand on original.]

Court may adjudge reasonable as Attorney's fees in said suit.

THELMA GREGOR HAYES

No. Due Jan. 22, 1947.

The said party of the first part further agrees to pay all taxes and assessments that may be levied upon the said premises before the same shall become delinquent, and to keep the said buildings insured for the benefit of the said party of the second part in a sum not less than the amount secured by this mortgage, and to deliver the said policies of insurance to said party of the second part, with loss by fire, if any, payable to the said party of the second part as his interest may appear.

In case the said party of the first part fails to pay taxes or assessment before the same shall become delinquent, or to pay the insurance premiums for insurance on said buildings, said party of the second part or his assigns, may do so, and the amounts so paid, with interest at the rate of eight per cent per annum from date of payment shall be added to and deemed a part of the money secured by this mortgage.

Now if the sums of money due upon the said promissory note shall be paid according to the terms thereof, this conveyance shall be void; but in case default shall be made in payment of principal or interest as above provided, then the said party of the second part his successors or assigns, may sell the premises above described, with all and every of the appurtenances, or any part thereof in

the manner prescribed by law, and out of the money arising from such sale, retain the said principal and interest, together with the costs and charges of making such sale, and a reasonable sum as attorney's fees, and the overplus, if any there be, pay over to the parties of the first part, their heirs or assigns; and the said party of the first part, for herself, her heirs, executors and administrators, do covenant and agree to pay said party of the second part, the said sum of money as above mentioned.

In Witness Whereof the said party of the first part has hereunto set her hand and seal the day and year first above written.

THELMA GREGOR HAYES,
Party of First Part.

Executed in the presence of:

/s/ GRADELLE LEIGH,

/s/ MARY McDONNELL.

United States of America,
Territory of Alaska—ss.

This Is To Certify that before me, the undersigned, a Notary Public, personally appeared Thelma Gregor Hayes, to me personally known, and known to me to be the identical person who executed the above and foregoing instrument, and she acknowledged to me that she signed the same freely and voluntarily and for the purposes therein mentioned.

In Witness Whereof, I have hereunto set my

hand and affixed my official seal this 23rd day of January, 1946.

[Seal] /s/ GRADELLE LEIGH,
Notary Public for Alaska.

My Commission expires 11/7/48.

99471

Territory of Alaska,
Fourth Judicial Division—ss.

Filed for record at request of L. D. Colbert on the 23 day of January, 1946, at 16 min. past 1 p.m. and recorded in Vol. 14 of Real Mtgs., page 393. Fairbanks Recording District.

/s/ ELEANOR M. ELY,
Recorder.

6/16/50.

APPELLANT'S EXHIBIT K

Receipt

July 6, 1946

Received from Thelma Hayes Twelve Hundred Twenty Four Dollars for payment in full with interest on Graehl Circle Bar Mortgage.
\$1224.00 paid in full.

/s/ L. D. COLBERT.

APPELLANT'S EXHIBIT L

Emma Colbert

609 East 23rd Street, Indianapolis, Indiana

February 21, 1947

Dear Brother Louis:

Thank you so much for the lovely valentine which added much to my 80th birthday enjoyment.

My birthday was well celebrated with cards, letters, flowers and gifts from relatives and friends.

I had two birthday dinners and two birthday cakes—so you see I fared well.

Belli came to get the birthday dinner on the 15th and Vic had ordered a specially decorated cake. The table was set for eight and the six guests were old friends who used to live in Wabash. You would remember Clara Hess Warmoth, Lyle and Jean Hartio, Daise Henley, Helen Watson and Eva Mackey Whitcraft.

On Sunday the Buell family who used to live on Mr. Henay's farm came for another birthday dinner. They have two grown-up daughters now. Betty Buell baked me a special birthday cake so we had that on Sunday. My friends Mr. and Mrs. MacKinsey were here too, so we had another party of eight.

One of my friends sent a beautiful flower centerpiece for the dining table.

The Eckhart family sent me a lovely blooming plant and the little boys made the valentines they sent.

I had a nice check from Anna Lou and books, aprons, candy and other gifts from various friends.

I hope you may have just as happy a time when you get to be eighty.

I hope you are getting well and that you will soon be able to be about as usual.

I am grateful to Mrs. Hayes for looking after you and want her to know how much I appreciate her efforts. I am pleased to know that she helps you to remember me.

Best love to you from Vic and

Your Devoted Sister,

/s/ EMMA

6/16/50

[Envelope]

[U. S. 5 Cent Stamp]

[Postmark]: Indianapolis, Ind., Feb 21, 1947

[Addressee]: Mr. Louis Dale Colbert, Box 730,
Fairbanks, Alaska

APPELLANT'S EXHIBIT M

AFFIDAVIT OF RENEWAL OF CHATTEL
MORTGAGE

United States of America,
Territory of Alaska,
Fourth Judicial Division,
Fairbanks Precinct—ss.

L. D. Colbert being first duly sworn on oath deposes and says: That he is the owner and holder of a certain chattel Mortgage made by Thelma Gregor Hayes, and that he hereby makes and files this affidavit of renewal of said chattel mortgage in his own behalf.

That on the 28th day of August, 1944, the said Thelma Gregor Hayes, as mortgagor, made and executed to this affiant as mortgagee, a certain chattel mortgage, being instrument No. 95878, and being recorded in Fairbanks Precinct on August 29, 1944.

That said chattel mortgage, No. 95878, was filed for record in the office of the Recorder of Fairbanks Precinct, as a chattel mortgage, on the said 29th day of August, 1944; That said instrument sets forth a certain promissory note of the said mortgagor to the mortgagee for the sum of five hundred (\$500.00) Dollars, bearing interest at the rate of eight per cent per annum, due August 28, 1945, for the payment of which the said principal sum and interest the said chattel mortgage was made, executed and delivered to the said mortgagee as security.

That this affiant as the said mortgagee is now the owner and holder of said note, and of said chattel

mortgage and that the interest of this affiant as mortgagee in the property described in said chattel mortgage at the time this affidavit is made is the sum of Five Hundred (\$500.00) Dollars with interest thereon at eight per cent per annum from June 23, 1945, and the said principal sum and interest is now due, owing and unpaid from the said mortgagor to this affiant as mortgagee, and this affiant as mortgagee has and holds a lien upon all of the personal property described in the said chattel mortgage above mentioned for the payment of the said sum of Five Hundred (\$500.00) Dollars with interest thereon at the rate of eight per cent per annum from June 23, 1945.

That this affidavit is made for the purpose of renewing the said chattel mortgage and continuing the lien thereof upon all of the said personal property described in said instrument for the further period of one year, in accordance with the provisions of section 2883 of the compiled laws of Alaska, 1933, and amendments thereto relating to the renewal and duration of chattel mortgage liens.

/s/ L. D. COLBERT.

Subscribed and Sworn to before me this 18th day of September, 1945.

[Seal] /s/ MAURICE T. JOHNSON,

Notary Public for the Territory of Alaska.

My Commission expires April 27, 1948.

6/16/50.

APPELLANT'S EXHIBIT N
CONTRACT AND AGREEMENT

This Contract and Agreement, made and entered into on this 23rd day of September, 1946, by and between L. D. Colbert, of Fairbanks, Alaska, first party, and Thelma D. Hayes, of the same place, second party,

Witnesseth:

Whereas first party is the owner of that certain Judgment in the District Court for the Territory of Alaska, Fourth Division, in which Walter B. Allison, Jr., is the plaintiff, and Thelma D. Gregor is defendant, No. 5173, and upon which there is now due and owing the sum of Three Thousand Five Hundred and Fifty-six Dollars and Thirty-nine Cents (\$3,556.39), and whereas said first party caused a special execution issued on the 26th day of August, 1946, for the sale of said real property of second party, and whereas first party has agreed to instruct the United States Marshal for the Fourth Division, Territory of Alaska, to return said Writ without sale, Now, Therefore, it is mutually understood and agreed as follows:

I.

That second party will pay to first party the sum of Six Hundred Dollars (\$600.00) upon the execution of this agreement as part payment upon said Judgment, and will pay in addition thereto the

costs incurred amounting to the sum of Twenty-two Dollars (\$22.00).

II.

Second party promises and agrees to pay to first party the sum of Two Hundred Dollars (\$200.00) per month and every month until the full amount of said Judgment has been fully paid, and in addition to said payments of Two Hundred Dollars (\$200.00) per month, said party promises to pay to said first party an additional sum of Three Hundred Dollars (\$300.00) to be applied upon said Judgment on the 1st day of January, 1947.

III.

First party promises and agrees that he will not cause an execution to be issued as long as said second party makes said payments as hereinabove provided, and will not cause an execution to be issued in the above-entitled action unless said second party defaults or refuses to pay any payments upon said Judgment as hereinabove provided.

IV.

Said first party hereby acknowledges receipt of the payment of Six Hundred Dollars (\$600.00) to be applied on said Judgment, together with the sum of Twenty-two Dollars (\$22.00) paid by second party as the amount of the costs agreed herein to be paid by said second party.

In Witness Whereof the parties have hereunto set their hands this 23d day of September, 1946.

/s/ L. D. COLBERT,
First Party.

/s/ THELMA D. HAYES,
Second Party.

Executed in the Presence of:

/s/ JULIEN A. HURLEY,

/s/ PEGGY E. LYLE.

United States of America,
Territory of Alaska,
Fourth Division—ss.

Be It Remembered that on this, the 23rd day of September, 1946, before me, the undersigned, a Notary Public in and for the Territory of Alaska, duly commissioned and sworn, personally came L. D. Colbert and Thelma D. Hayes, known to me to be the identical individuals named in and who executed the foregoing Contract and Agreement; and each of them acknowledged to me that he did so freely and voluntarily, for the uses and purposes therein set forth.

In Witness Whereof, I have hereunto set my hand and Notarial Seal on the day and year hereinabove first written.

/s/ JULIEN A. HURLEY,
Notary Public in and for the
Territory of Alaska.

My Commission expires: June 12, 1949.

6/16/50.

APPELLEE'S EXHIBIT No. 1

[Check]

First National Bank of Fairbanks
59-7

No. 2

Fairbanks, Alaska Oct. 17, 1946.

Pay to the order of: Brown Jewelry

Store\$ 17.17

Seventeen dollars and 17 cents.....Dollars

/s/ L. D. COLBERT

By /s/ THELMA D. HAYES,
Attorney in Fact.

Address: Fairbanks

[Stamped]. Paid 10/19/46.

[Reverse]

Stamped: Arthur S. Brown

[Endorsed]: /s/ L. D. COLBERT

[Check]

First National Bank of Fairbanks
59-7

No.1

Fairbanks, Alaska October 16, 1946.

Pay to the order of: Cash.....\$100.00

One hundred dollars and no cents.....Dollars

/s/ L. D. COLBERT

By THELMA D. HAYES,
Attorney in Fact.

Address: Fairbanks

APPELLEE'S EXHIBIT No. 1—(Continued)
[Stamped]: Paid 10/19/46.

[Reverse]

/s/ ALBERT BERNARD

[Check]

First National Bank of Fairbanks
59-7

No. 3

Fairbanks, Alaska Oct. 18, 1946.

Pay to the order of: Cash.....\$100.00
One hundred dollars and no cents.....Dollars

/s/ L. D. COLBERT

By /s/ THELMA D. HAYES,
Attorney in Fact.

Address: Fairbanks

[Stamped]: Paid 10/19/46.

[Counter Check]

First National Bank of Fairbanks
59-7

No. 1

Fairbanks, Alaska Oct. 22, 1946.

Pay to the order of: Cash.....\$100.00
One hundred dollars and no cents.....Dollars

/s/ L. D. COLBERT

By THELMA D. HAYES,
Attorney in Fact.

Address: Fairbanks

APPELLEE'S EXHIBIT No. 1—(Continued)
 [Stamped]: Paid 10/22/46.

[Reverse]

[Endorsed]: /s/ THELMA D. HAYES

[Counter Check]

First National Bank of Fairbanks
 59-7

No. 1

Fairbanks, Alaska Oct. 30, 1946.

Pay to the order of Livesley's Men's

Shop\$ 40.00

Forty dollars and no centsDollars

/s/ LOUIS D. COLBERT

By /s/ THELMA D. HAYES,
 Attorney in Fact.

Address: Fairbanks

[Stamped]: Paid 10/31/46.

[Stamped]: For deposit Oct. 31. Livesley's Men's
 Shop. Per B. E.

APPELLEE'S EXHIBIT No. 1—(Continued)

Statement of Account
The First National Bank
Fairbanks, Alaska

L. D. Colbert

Kindly Advise the Bank of Any Change in Address.

Please Examine at Once. If No Error Is Reported in Ten Days
the Account Will Be Considered Correct.

Date	Checks in Detail	Date Deposits	The Last Amount in This Column Is Your Balance
	Balance Brought Forward	Oct. 15, 1946	411.97
Oct. 19/46	17.17— 100.00—	100.00—	Oct. 19/46 194.80*
Oct. 22/46	100.00—		Oct. 22/46 94.80*
Oct. 31/46	40.00—		Oct. 31/46 54.80*

[Stamped] : Your Balance Nov. 1, 1946.

This Statement is furnished you instead of balancing your Pass Book. It saves you the trouble of bringing your Pass Book to the bank and waiting for it to be balanced. These statements will be found very convenient to check up and file. All items are credited subject to final payment.

Use Your Pass Book Only as a Receipt Book
When Making Deposits.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, John B. Hall, Clerk of the above-entitled Court,
do hereby certify that the following list comprises
all proceedings as per designation of Record filed
by Appellant in the above-entitled cause viz.:

Page

1. Appeal Papers, Probate Court to
District Court
Petition for Probate of Will..... 1
Affidavit in support of above petition.. 3

Last Will and Testament of Louis D. Colbert	4
Affidavit of Subscribing Witness James F. Haynes	6
Affidavit of Subscribing Witness V. A. Cabbell	8
Petition to Revoke Letters Testa- mentary and Grant them to per- son having Prior Right	9
Answer of First National Bank to the foregoing Petition	11
Reply of Petitioner to foregoing Answer	14
Citation	16
Findings of Fact & Conclusions of Law	18
Judgment	20
Exceptions	22
Notice of Appeal	24
2. Minute Order Setting for Trial.....	25
3. Minute Order re Testimony of Dr. Arthur John Schaible	26
4. Trial by the Court	27
5. Minute Order re Brief of Contestant....	28
6. Brief of Contestant	29
7. Signed Order of District Judge re Decision of Probate Court	35

8. Signed Order Amending Foregoing Order	36
9. Notice of Appeal	37
10. Designation of Record	38
11. Appeal Bond	39
12 Transcript of Testimony and Pro- ceedings in the District Court (Pages 1 to 53 incl.)	

Witness my hand and the seal of the above-en-
titled Court, this 8th day of December, 1950.

[Seal] /s/ JOHN B. HALL,
Clerk of the District Court, Fourth Judicial Divi-
sion, Territory of Alaska.

[Endorsed]: No. 12771. United States Court of
Appeals for the Ninth Circuit. Thelma D. Hayes,
Appellant, vs. First National Bank of Fairbanks,
Executor of the Estate of Louis D. Colbert, de-
ceased, Appellee. Transcript of Record. Appeal
from the District Court for the Territory of Alaska,
Fourth Division.

Filed December 15, 1950.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the
Ninth Circuit.

In the United States Court of Appeals for the
Ninth Circuit
No. 12771

In the Matter of
The Estate of LOUIS D. COLBERT, Deceased,
FIRST NATIONAL BANK OF FAIR-
BANKS, Executor.

To: The Clerk of the United States Court of
Appeals for the Ninth Circuit

DESIGNATION OF RECORD

The appellant hereby designates by reference to
the pages of the original certified record the follow-
ing portions of said record which are material to the
consideration of this appeal:

	pp.
Petition For Probate of Will.....	1-2
Affidavit in Support of Probate of Will.....	3
Last Will and Testament of Louis D. Colbert.	4-5
Affidavit of Subscribing Witness.....	6-7
Affidavit of Subscribing Witness.....	8
Petition to Revoke Letters Testamentary and Grant Them to Person Having Prior Right	9-10
Answer of the First National Bank of Fair- banks, Alaska to the Petition to Revoke Their Letters Testamentary and to Appoint Thelma D. Hayes as Executor of Said Estate	11-13
Reply	14-15

Finding of Facts & Conclusions of Law.....	18-19
Judgment	20-21
Exceptions	22-23
Notice of Appeal.....	24
Order	36
Notice of Appeal.....	37
Designation of Record.....	38

Certified Transcript of Testimony and Proceedings before District Court as Numbered by District Court Reporter, pp. 1-53.

The Following Exhibits and Portions of Exhibits:
Appellant's Exhibit A-1.

The Following Documents from Appellant's Exhibit A:

Judgment, Findings of Fact and Conclusions of Law; Motion for Continuance together with supporting affidavit by Chas. J. Clasby and the letters attached thereto; Petition for Appointment of Guardian to Take Care, Custody and Management of the Estate of Louis D. Colbert, an Incompetent and Incapable Person;

The Following Document from Appellant's Exhibit B:

Will of Louis D. Colbert.

The Following Document from Appellant's Exhibit C:

Last Will and Testament of Louis D. Colbert.

Appellant's Exhibits D, E, F, G, H, I, J, K, L, M, N, and Appellee's Exhibit I.

/s/ WARREN A. TAYLOR,
Of Attorneys for Appellant.

Filed Dec. 12, 1950.

[Title of Court of Appeals and Cause.]

To: The Clerk of the United States Court of
Appeals for the Ninth Circuit

STATEMENT OF POINTS

The appellant states that the points upon which she intends to rely on this appeal are as follows:

1. That the District Court erred in ordering the appellant's Exceptions to the Findings of Facts, Conclusions of Law and Judgment of the Probate Court overruled and in ordering approval, sustainment and adoption of said Findings of Fact, Conclusions of Law and Judgment of said Probate Court. (Findings of Fact and Conclusions of the Probate Court appear at pages 18 and 19 of the original certified record. That said Judgment of the Probate Court appears at pages 20 and 21 of said original certified record. That said District Court's Order overruling and adopting appears at page 35 of said original certified record.)

2. That said District Court's order of approval and adoption was contrary to the weight of evidence and to the law.

3. That said District Court erred in finding that Louis D. Colbert did not possess testamentary capacity at the time of executing his Will of October 22, 1946, and that said finding was contrary to the evidence and to the law.

/s/ WARREN A. TAYLOR,

Of Attorneys for Appellant.

[Endorsed]: Filed Dec. 12, 1950.

Subscription price, Five Dollars per Annum in Advance. Single Copies, Fifteen Cents. Entered as Second-Class Matter, October 3, 1917, Post Office at Chicago, Ill., under No. 102,363. Accepted for mailing at special rate of postage provided for in Act of October 3, 1917. Authorized for mailing at special rate of postage provided for in Act of October 3, 1917. Postpaid.

ORIGINAL ARTICLES

THE EFFECT OF THE INFLUENZA VIRUS ON THE RESPIRATORY SYSTEM
J. H. HAY, M.D., CHICAGO, ILL.
The influenza virus has been shown to be a filterable virus, and its effect on the respiratory system has been studied in a number of experiments. It has been found that the virus is highly infectious, and that it can be transmitted from one person to another by direct contact or by the air.

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